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THE STRUGGLE FOR THE
FREEDOM OF THE PRESS

1819-1832

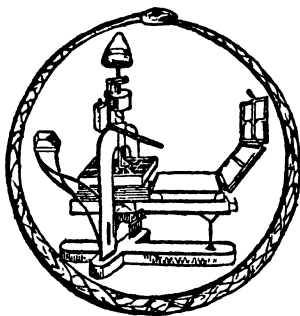
THE STRUGGLE FOR THE FREEDOM OF THE PRESS

1819—1832

By

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PRINTED IN GREAT BRITAIN BY
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FIRST PUBLISHED IN 1928

THE SYMBOLIC REPRESENTATION OF A FREE PRESS PRINTED
ON THE TITLE-PAGE HAS BEEN ADAPTED FROM A WOODCUT
BY GEORGE CRUIKSHANK. IT SHOWS A HAND PRESS OF
THE PERIOD, SURROUNDED BY CORRUPTION DEVOURING
ITSELF, AND CROWNED WITH THE CAP OF LIBERTY

PREFACE

IN the modern world THE FREEDOM OF THE PRESS is a subject of such vital concern and perennial interest that this history of the struggle for its attainment cannot be without some bearing on the doubts and discussions of the present age.

In the preparation of this work the period of post-war unrest, and in particular the dozen years between Peterloo and the Great Reform Bill, have been specially studied, because those years saw the great change from aristocratic to democratic conceptions of Education, Government, Religion, and the Press; and as part of that change they witnessed the most decisive episodes in the transition from the Prosecuting System to the Freedom of the Press.

On account of the historical and political importance of this unduly neglected aspect of the British Reform Movement it has been thought justifiable to treat the subject at some length. Indeed, the nature of the struggle has made detailed treatment of it absolutely necessary, in order to show how the inexpediency of prosecutions for criminal libel gradually became apparent to those in authority, and to demonstrate how the Freedom of the Press became an accepted principle of the British Constitution.

The sources utilized are fully indicated at the end of the volume.

To Professors Hearnshaw, Laski, Veitch, and Graham Wallas I gladly acknowledge my gratitude for the interest they have taken in this work; and to the University of London my deep indebtedness, both for the studentship that made possible the research and for a grant in aid of publication.

WILLIAM H. WICKWAR

PARIS, 1928

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THE STRUGGLE FOR THE FREEDOM OF THE PRESS

CHAPTER ONE

PRESS-PROSECUTIONS IN ENGLAND IN THE EARLY NINETEENTH CENTURY

1. THE FREEDOM OF THE PRESS IN ENGLAND.
2. THE ENGLISH LAW OF CRIMINAL LIBEL.
3. THE LAW OF THE PRESS.
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I. THE FREEDOM OF THE PRESS IN ENGLAND.

A PERFECTLY free Press is inconceivable; but in different ages the Freedom of the Press has been limited in different ways. In Britain to-day all questions of public concern, whether political or economic, constitutional or personal, religious or social, can be discussed without fear of criminal prosecution, except in quite abnormal circumstances. The Freedom of the Press in this sense has become so much a recognized part of the British Constitution that we are prone to forget that such freedom from prosecution as the Press now normally enjoys is barely a hundred years old. A century ago the Liberty of the Press meant little more than the absence of a Press-censorship. The aim of this work is to trace the great and critical struggle which ended four centuries of political shackling, and which, as part of the general Reform Movement, helped to pave the way for a century of rapid change and emancipation.

We shall be concerned throughout with THE PRESS in the very widest sense in which that term has been used, as its special application to Journalism was only just beginning in the period here under review. In its full meaning the phrase THE FREEDOM

OF THE PRESS must be held to embrace the whole practice of printing, and to refer as much to the printing-press as to its products. The great newspapers of the early nineteenth century, with their comparatively large capital and their expensive printing machines, had so much to risk that they were seldom to the front of the fight. Book and pamphlet, weekly and quarterly, handbill and poster, letterpress and woodcut: these were the shot used in the struggle, and the hand-press was the weapon that discharged them.

From the first employment of the Press in Europe on behalf of the Catholic Church that Church had tried to exercise a control over printing, and from its establishment in England under the patronage of the New Monarchy the control had been claimed as a Royal prerogative. For eighty years the Council of the Tudors and Stuarts attempted to restrict printing to members of the Stationers' Company, and from 1559 no work might be printed by members of that Company until it had received the *imprimatur* of certain bishops or judges. But these restrictions could be enforced by neither Council nor Company; Puritans and Jesuits regularly evaded the order; the number of presses could not be kept down; printing could not be confined to London and the Universities; and the Company could not make good its monopoly. By 1637 the attempt to control printing had failed; but it might still be possible to control publication. So by Star-Chamber Decree and by Parliamentary Ordinance, by Statute, by Proclamation, and by Common Law, it was laid down that all books and papers printed by anyone must be submitted to licensers and be registered by the Stationers' Company before being published. The heterodox Milton pleaded for the *Liberty of Unlicensed Printing*; the still more heterodox Blount vindicated the *Liberty of the Press* fifty years later, in 1692, and by his unscrupulous stratagems brought down such a storm of unpopularity on William III's Tory licenser that the expiring Licensing Act was renewed for only two years. Then, in 1695, the Commons raised so many objections to its details that it was not renewed again in the same form, and the session closed before a Select Committee had time to report a less objectionable measure. Thus was achieved what constitutionalists called the *Liberty of the Press*.

The Licensing Act had expired, almost by accident and without public notice. "The Liberty of the Press consists, in a strict sense, merely in an exemption from the superintendence of a licenser," wrote a great Whig historian.¹ The Liberty of the Press was no more than this—a right or liberty to publish *without* a licence what formerly could be published only *with* one.

Such liberty is far narrower than freedom, and it is not surprising that the almost accidental expiry of the Licensing Act escaped public notice. There are more ways than one of killing a cat, and Blackstone summed up the eighteenth-century attitude towards the printing-press when he wrote: "The Liberty of the Press is, indeed, essential to the nature of a free State; but this consists in laying no previous restraints upon publication, and not in freedom from censure for criminal matters when published."² Subsequent censure instead of previous censorship, punishment instead of prevention, became the rule for the next hundred and thirty years. The interference with the Press would certainly be less because less regular; but the loss of regularity meant an increase of risk and uncertainty for all who were connected with it.

For breach of law, or for breach of privilege, any writer, printer, publisher, bookseller, or newsagent was still liable to judgement at the bar of either House of Parliament or at the bar of any other Court.

The practice of the House of Commons of censuring its own Members had been extended to the censure of strangers who seemed to it to be bringing it into contempt, and a general jurisdiction over political misdemeanours had been exercised on occasion, in neglect of the more constitutional course of directing a prosecution by the Attorney-General.³ Newspapers, political and ecclesiastical pamphlets, histories, sermons, handbills were all claimed by the House as lying within its jurisdiction.

¹ Hallam, *Constitutional History* (1827), III. xv. Similarly, Lord Sidmouth, the Tory Home Secretary: "It was the great character of a Free Press that its productions were not interfered with before publication; but that, when the publication took place, if it should be considered to be injurious to morals, to religion, or to the good order of society, it then became liable to prosecution." —*Hansard*, xli. 344 (November 29, 1819).

² Blackstone, *Commentaries* (1769), IV. xi. 151.

³ On Parliamentary Privilege see the Attorney-General's three-day speech in *Stockdale v. Hansard* (1839), reprinted in *Speeches of John Campbell*, pp. 138 sqq.

Besides having works of which it disapproved burnt by the common hangman, either House might order any who had offended against it to attend at the bar; it might reprimand them, and, if they were not then discharged, it might commit them to a Serjeant-at-Arms, or to a prison till the end of the session; if the offender were one of its own Members, he might be expelled. The very summer that saw the abolition of the Court in the Star Chamber saw the unofficial publication of parliamentary debates prohibited. Such reports as were published were in contempt of this privilege of secrecy; initials, fictitious names, disguises, and nicknames were used, rather than mention the real names of the Senators of Great Lilliput; these mutilated reports were kept back till the close of each session, until the end of Walpole's premiership, when the Commons resolved to proceed with the utmost severity against those who published reports "as well during the recess as the sitting of Parliament." Inaccuracy, misrepresentation, fiction, and unfairness naturally marked the reports that were made in such an atmosphere of mistrust; no one can tell whether Samuel Johnson or William Pitt composed the early speeches ascribed to the latter. When the change came in 1771 it came only through the deliberate defiance of Parliament by men who printed in their newspapers the actual names of speakers even during the session: the Lord Mayor of London imprisoned the messenger of the House of Commons who had been sent to arrest one of the printers, and the House had the Lord Mayor imprisoned in the Tower for committing its messenger to gaol; the City disregarded the privileges of Parliament, Parliament violated the franchises of the City; but under the shadow of the latter reporting was henceforward safe, and with the development of shorthand it soon became as fair as it was free.

The interference of Parliament with the Press did not end, however, with this triumph of Mr. Alderman Wilkes: it was still possible for any Member to have the gallery cleared of strangers. Early in 1810 the First Lord of the Admiralty (Mr. Yorke) had them excluded during a committee on the unsuccessful naval expedition to Walcheren; Sheridan made a well-known and extravagant speech on behalf of the Freedom of the Press; Windham made an equally extravagant speech against it; and a Westminster debating society had a placard printed announcing a

discussion: "Which was the greater outrage on the public feeling—Mr. Yorke's enforcement of the standing order to exclude strangers from the House of Commons, or Mr. Windham's recent attack on the Liberty of the Press?" On the motion of the First Lord this placard was voted a breach of privilege, and the organizer of the society was committed to Newgate. In an open letter to *Cobbett's Register* Sir Francis Burdett, the Member for Westminster, questioned Parliament's right of commitment for offences committed outside its own walls, and he was therefore himself committed to the Tower, though not until a week-end of rioting around his house had ended with the calling out of the Dragoons against the "civil force" of the Sheriff and the City Militia which he had called to his defence. This contest, ridiculous as it was in many ways, did at least serve to demonstrate popular faith in Freedom of Speech and Press, and popular distrust of arbitrary imprisonment by Parliament acting as judge in its own cause. The memory of the Press Riots of 1771 and 1810 prevented either House from again provoking such disorder.

The same unwillingness to leave the Press free from the constant risk of punishment subsequent to publication was shown by the number of prosecutions in the Courts of Law, where juries were almost as willing to convict as Governments were to prosecute. There were at least seventy prosecutions for *public* libel during the first thirty years of George III's reign.¹ At all times of crisis there was an outburst of Press-prosecution. After the Terror in France and the anti-Jacobin panic in Britain, the Attorney-General could claim "that there had been more prosecutions for libel during the last two years than there had been for twenty years before."² Yet his predecessor had boasted that, "so far from having been remiss in his duty, with regard to seditious publications, he had on his file two hundred informations."³ Similarly, during the three years 1819, 1820, 1821 there were over one hundred and twenty prosecutions on charges of seditious and blasphemous libel.⁴

¹ Attorney-General Sir Archibald MacDonald on Fox's Libel Bill, 1791, *Parl. Hist.* xxix. 551, quoted Erskine May, *Constitutional History*, iii. 250 n.

² Attorney-General Sir John Scott, November 30, 1795, quoted, H. Twiss, *Life of Lord Chancellor Eldon*, i. 267.

³ Attorney-General MacDonald, quoted, H. Jephson, *The Platform*, i. 199.

⁴ Appendix B.

Thus punishment for breach of privilege and prosecutions for libel survived as serious restrictions on the Press after the expiry of the licensing system in 1695.

So the ending of the "prosecuting system," as Bentham called it, became the chief aim of the Struggle for the Freedom of the Press. The Law of Criminal Libel, on which libel prosecutions were based, must now be considered.

2. THE ENGLISH LAW OF CRIMINAL LIBEL.

Every Government, whether of a Catholic Church or of a Nation State, has always tried to realize some ideal of social order and to prevent departures from some generally accepted standard of civilized life. It is itself the heir of some great tradition which it feels to be its duty to hand on from one generation to the next. Any breach of that order is apt to be repressed as being undesirable in itself and a wrong example to others. Yet what has seemed vital to the social order of one generation has been anathema to another. The liberty that has been taken for granted in one age has been looked on in another as intolerable licence. The march of events has shown us how human institutions and ideas are always imperfect and are always changing. When this conception of political and religious development has been accepted by a Government, the Press has stood most chance of being free, since diversity and variety and the constant growth of minorities into majorities are essential to such change; but the more a Government has inclined to believe that the idea of social order which it has held is absolute and final, the more jealous has it proved likely to be for the preservation of that order. So completely static a view of human life has never perhaps been common except in utopias; but even a dynamic view of social organization has not always produced very different results. Those who have pictured the change society undergoes as a straightforward and cognizable growth from its existing roots in the direction pointed to by its existing head have at best shut their eyes to the complex interaction of human interests by which also development has taken place, and have at worst attempted to root up as weeds all other growths in the "fair field full of folk."

Those who ruled Britain at the beginning of the nineteenth

century were generally satisfied with the working of the Constitution and the Christianity of the day, and they saw no reason why the whole nation should not be united in the profession of respect for Christianity and in contentment with the aristocratic Constitution they had inherited from their fathers. Unity and uniformity in subjection to their natural leaders was the ideal handed down by the eighteenth-century gentlemen, just as it had been by the monarchs of previous centuries. In that atmosphere the law we now have to consider was made. With the passing of that state of mind the struggle we are considering was to end in victory, although the law that was no longer to bind men was to remain, even to our own day, an outworn conglomeration of unenforced and unenforceable rules.¹

The *publication* of anything with a *malicious intention* of causing a *breach of the peace* was a *misdemeanour at Common Law*. Anything that it was thus illegal to circulate was called a *criminal libel*, and the same term was commonly applied to the act of circulating it. Criminal libels were distinguished as *defamatory*, *obscene*, *blasphemous*, or *sedition* libels, according as they treated of personal, sexual, religious, or political matters.

In that brief statement there are a dozen terms with some special legal significance, and the technical and the popular meanings of a single word were often widely different. *Publication*, for instance, did not only mean publishing; it meant any kind of circulation. It included the wholesale selling which we call publishing; but it also included retailing, and booksellers and newsvenders were therefore publishers at law. Furthermore, to let what one had written come into the hands of another person, even without any publicity, was an act of publication.

Similarly, a *malicious intention* meant a foreseeable tendency. Malice did not mean spite, and intention did not mean motive. A libeller's ultimate motive was often good and generous, and his more immediate intention was very seldom spiteful. But criminal intention was the test of criminality, according to the old maxim "actus non fit reum, nisi mens sit rea." So by the fiction of "constructive malice," or the doctrine of "presumptive intent,"

¹ What follows owes much to F. L. Holt, *Law of Libel* (1812); Sir J. F. Stephen, *Digest of the Criminal Law* (1877) and *History of the Criminal Law* (1883); Z. Chafee, *Freedom of Speech* (New York, 1920); and the evidence before the Campbell Committee, 1843.

a reckless indifference to the possible ill consequences of a publication was construed into an evil intention, according to another maxim that "every person must be deemed to intend the consequences which would naturally follow from his conduct."

A tendency to cause a breach of the peace was thus the essence of a criminal libel. Persons were indicted for publishing "false, wicked, and malicious libels," but the averment of malice, wickedness, and falsity was mere inessential surplusage inserted by a draftsman who was paid by the folio and who found it profitable to maintain the time-honoured custom of abusing the offender. The publication of a criminal libel was a "constructive breach of the peace," and this principle decided every doubtful question. A criminal libel was in itself a transgression of the established standard of public behaviour, and was therefore in some measure a breach of the peace, taking the King's peace to be as wide a phrase as the King's English. To disturb the King's peace of mind was probably a breach of the King's peace.¹ To embroil him in war with other sovereigns was undoubtedly a breach of his peace. Above all, there was always a possibility that something circulated might cause a breach of the peace of the kind usually meant by that phrase. It might do this directly or indirectly, intentionally or unintentionally. Directly, and perhaps intentionally, printed matter might in rare circumstances provoke a riot, and, since a mob-leader is largely to blame for the deeds of a mob, the "publication" of an inflammatory handbill or placard was tantamount to a breach of the peace. Also, again directly, but perhaps unintentionally, a person defamed, or some friend of the victim, or one whose sense of religious propriety was outraged, or one whose political convictions were slighted, might be provoked to assault the "publisher"; therefore, according to the "six of one and half a dozen of the other" principle, those who provoked others to a breach of the peace were as guilty as the peace-breakers themselves, and, furthermore, were guilty even when the peace was not broken at all. There was another and more indirect way in which there was a remote chance of criminal libel causing a breach of the peace; it might bring institutions or prominent persons into contempt, or hatred, or ridicule; people's minds might be so unsettled that some established institution, such as the State

¹ Abbott, C. J., in *K. v. John Hunt* (1824). *Vide infra*, Ch. VIII. sect. 2.

Church, might be overthrown; and if the Church were to be touched, or if Parliament were to be reformed, instability or insecurity might ensue; and revolution or class war might be the ultimate result of publications that stimulated discontent. Discontent would assuredly lead to attempts at change; and so long as a Government was unwilling to give way and grant a radical reform, so long did violent revolution remain a possibility. The alternatives were too clear to be mistaken: if publications which tended to cause insubordination were to be widely circulated, public feeling would demand great changes, and would have to be satisfied by radical reform or by revolution; if, on the other hand, no fundamental change was to be made by means of either radical reform or revolution, all publications which caused discontent would have to be repressed in accordance with the doctrine of indirect causation.

The publication of anything that might possibly lead to a breach of the peace was classed as a *misdemeanour*. This meant that it was a crime that had not been regularly inquired after by grand juries from the very earliest times; instead, a libel prosecution was more like a "litigious action" by the King or any other person, so that the libeller with whom issue was joined had the verbal advantage of being called the defendant and not the prisoner at the bar; moreover, there was a procedure by which the grand jury could be completely dispensed with, as will be explained later. The nuisance of prosecution was somewhat less in the case of a misdemeanour than it would have been in that of a felony: a warrant was needed before a libeller could be arrested; he might, if he were fairly treated, be released on bail instead of being committed to prison till his trial; he might have counsel for his defence; and his sentence could not imply the forfeiture of his property or his life. Criminal libel was often a political offence, and sometimes distinguished barristers gave their services free, as in the case of high treason; yet the libeller was not shielded by any of the elaborate safeguards that gave the prisoner many advantages in treason trials; a jury, for instance, might separate, if a trial lasted several days. Such a position satisfied no one, and there was therefore a constant tendency for criminal libel to become less and less a misdemeanour and more and more an anomaly.

The retention of the archaic classification of libel as a misdemeanour was bound up with the fact that it was a *Common-law* crime. Judges had regard to previous decisions in the Court of King's Bench: the law was not given them by any Act of Parliament. It is practically certain that King's Bench did not itself invent the Common Law of Criminal Libel, but that it derived it during the seventeenth century from its rival, the Star Chamber, in respect of anything that tended to a breach of the peace, not without some influence from its other rivals, the Ecclesiastical Courts, when there was any infraction of religious uniformity or sexual decency. Behind the Star Chamber and the Ecclesiastical Courts lay the law and legal tradition of the Roman and Byzantine Empires. This ancestry of the law of libel was well known. To the Radical it proved how tyrannical it was. To the Tory it showed how the Common Law was founded on the Law of Nature, and how it embodied the common sense of the rulers in all ages, so that the language it spoke was the language of reason itself.

But there were also a few definite Acts of Parliament which were not enforced, though nominally in force, and which served as Parliamentary votes of confidence in the Common Law. By an Act of 1795, drawn by the future Lord Eldon as Attorney-General, the penalties of high treason were attached to the publication of any design of intimidating either House of Parliament, or of forcing the King to change his measures or counsels; and the incitement of the people to hatred or contempt of the dynasty, or of the Constitution, was declared a high misdemeanour punishable with seven years' transportation on the second offence.¹

Similarly, the spirit behind the Common Law of blasphemy in its extremest form was sanctioned by an Act of 1697, which made every avowed apostate from orthodox Christianity to Unitarianism and other heresies incapable of holding any office under the Government.² Nothing but confusion resulted from the Unitarian Toleration Act of 1813, by which the denial of certain particular

¹ "Act for the Safety and Preservation of His Majesty's Person and Government against Treasonable and Seditious Practices," 36 Geo. III, c. 7, in force from 1795 ("The Two Acts") to 1820 (end of first session after George III's decease). 57 Geo. III, c. 6, made perpetual certain parts of this Act from 1817 ("The Four Acts").

² 9 and 10 Will. III, c. 35.

doctrines ceased to be punishable by statute.¹ Denial of Christianity in general remained penal at Common Law, so that if a Judge imagined that the particular doctrine impugned was the essence of Christianity, he could pronounce the attack blasphemous. Men who had not had a legal training were naturally inclined to imagine that the law was altered when one statute was partly repealed by another; but they were to be surprised with the discovery that they were still punishable under the Common Law.²

Criminal Libel is a phrase needing explanation in both its parts. when anything that was circulated was regarded as libellous, every copy of it was regarded as a separate libel, and a separate prosecution could be instituted for every single act of publication.³ Moreover, a libel was not necessarily a book, nor did it necessarily involve either writing or printing. A picture or a model could be just as libellous as letterpress or the written word: that was one reason why a regular publication of the type of *Punch* was inconceivable at the beginning of the nineteenth century. The form in which a thing was circulated did not matter if its tendency was criminal.

A criminal libel was sharply distinguished from a civil libel. The Common Law of criminal libel was of Roman inspiration: the Common Law of civil libel was largely of native manufacture. A tendency to cause a breach of the peace was the essence of a criminal prosecution: personal loss of character was the gist of a tort, and damages were the object of a civil action. It followed that libels on institutions could be made the subject only of criminal prosecutions, while libels on personal character could be treated either as crimes or as torts, and be made the subject either of criminal prosecutions or of civil actions for damages, according as they were considered as tending towards a breach of the peace or towards private loss. In the latter case the jury might award damages to the plaintiff; in the former the Judge might sentence

¹ 53 Geo. III, c. 160, the work of William Smith, M.P. for Norwich, a supporter of Priestley.

² Abbott, C. J., summing up in *K. v. Richard Carlile* (October 15, 1819).—*State Trials* (N.S.), i. 1387 sqq. Smith's reply to Eldon, who thought that Trinitarianism was the essence of Christianity and that Unitarianism was still illegal at Common Law (June 21, 1825).—*Hansard*, xiii. 1250 sqq.

³ Nevertheless, it was not safe for a publisher to assume that a libel was not a libel until it was declared such by a jury.

the defendant to pay a fine to the Crown, or to be imprisoned, or to give security for "good behaviour." In cases of personal defamation there were other differences besides the difference between retribution and punishment. Substantial truth was no justification for criminal libel, however beneficial to the public it might be, and the plea of merely accidental falsity was, of course, likewise ruled out: intentions did not matter—"The greater the truth, the greater the libel," because it was more likely to have an undesirable tendency.¹ If a whole class of persons was libelled, they could not bring an action for damages; but if the class of persons defamed was definite enough, a criminal prosecution could stand.² Again, a dead man could not bring an action for damages; but if a libel on the dead tended to disturb the peace, it could be made the subject of a criminal prosecution.

These important differences between civil and criminal defamation are all that are relevant to this survey. They lead us to the consideration of another important aspect of *criminal libels defamatory of individuals*. That is, that it was held that "the offence of libel . . . is proportionately more criminal as it presumes to reach persons to whom special veneration is due."³ As criminal libel included all libels that could be made the subject of civil actions and others also, it was thus of some importance that, when Cobbett was sued for damages in 1804 for writing that a very high official of the State was celebrated for understanding the modern method of fattening sheep as well as any man in Cambridgeshire, the Bench denied the right to publish a statement inferring that the dignitary in question was ill-placed in his high situation and was fit only for the common walks of life.⁴

Obscene Libel concerns us here much less. It is perhaps the only

¹ "For oh, it was nuts to the Father of Lies,
As this wily friend is named in the Bible,
To find it settled, by laws so wise,
That the greater the truth, the worse the libel."

THOMAS MOORE, *A Case of Libel*.

² "The Anglican Clergy of the Diocese of Durham" would be definite enough: probably "The clergy of the Diocese of Durham" would not. *Vide infra*, Ch. V. sect. 3.

³ Holt, *op. cit.*, p. 90.

⁴ *Cobbett's Weekly Political Register* (June 2, 1804), quoted by Bentham, *Elements of the Art of Packing*, in *Works*, v. 108. It is also noteworthy that the newspapers were not yet secure in their right to make public the evidence against a man before his trial.—*Morning Chronicle* (November 27, 28, December 10, 15, 22, 1823).

part of libel-law which has become more stringent in recent times. It is interesting largely as a not altogether satisfactory attempt to keep what is offensive within bounds, without judging art and science by quite the same standards as prevail in other walks of British life.

The Law of *Blasphemous Libel* was beset by a somewhat similar problem of quantitative measurement. Abuse or calumny of the Christian religion or Scriptures was undoubtedly illegal; but it is still uncertain whether or not a calm and temperate argument against Christianity was equally illegal. This uncertainty arose inevitably from the uncertainty as to what constituted a breach of the peace. There seems little doubt that the essence of a blasphemous libel came to consist in its offence "against the peace of our Lord the King, his crown and dignity," much more than in its being "to the high displeasure of Almighty God, to the great scandal of the Christian religion, and to the evil example of all others," all of which tendencies were alleged in indictments. The dishonour of making blasphemy a Common-law crime was assigned to Sir Matthew Hale, who was notorious also for his belief in witchcraft. He was reported to have said in 1676, in trying a man who had preached in Guildford Market-place,

"That such kind of wicked and blasphemous words were not only an offence to God and religion, but a crime against the laws, State, and Government, and therefore punishable in this Court (King's Bench); for to say 'Religion is a cheat' is *to dissolve all the obligations whereby the civil societies are preserved, and Christianity is parcel of the laws of England,* and, therefore, to reproach the Christian religion is to speak in subversion of law."¹

In 1729 Chief Justice Raymond brought heretical writings under the same rule as blasphemous preaching, when "poor mad Woolston, most scandalous of Deists," was tried for writing that an allegorical interpretation of the records of miracles was the only one that was not anti-Christian. The Chief Justice said:

"Christianity in general is parcel of the Common Law of England, and therefore to be protected by it. Now, whatever

¹ K. v. Taylor in Ventris, *Reports*, i. 293, quoted by Odgers, *Law of Libel*, p. 490.

strikes at the very root of Christianity tends manifestly to a dissolution of the civil government; so that to say an attempt to subvert the established religion is not punishable by those laws upon which it is established is an absurdity."

The political mysticism of Hale was repeated again and again, even in an age when Judges were not famous for religious ardour. In the chief existing exposition of the Law of Libel a contemporary barrister declared that the maintenance of the established religion "implies the amity, quiet, and confidence of the whole family of the State."¹ In theory the law was still that of the ecclesiastical compromise of 1690, by which the Government agreed to tolerate the minimum of dissent and to enforce the maximum of uniformity. In practice it was assumed at the beginning of the nineteenth century that the established religion was useful for keeping the lower orders in their proper place, and for preventing the overthrow of all other established institutions: popular Deistical writings tended to the overthrow of the Constitution, and learned disquisitions did not. In an age of reason and of criticism, a law that was so uncertain was bound to become as unsatisfactory to the Judges as it was to the defendants.

Politically, *seditious libel* was more important than any other. It consisted in the open expression of dissatisfaction with the established Government. While there was no machinery by which the people could overthrow a Government or alter the Constitution peacefully, all dissatisfaction was likely to lead to disturbance. Every libel against the State and the Constitution was an attack on the system from which proceeded such rights as subjects enjoyed. "Opinion is strength," wrote a contemporary authority on the Law of Libel, "and the good fame of government is necessary to maintain this opinion. The distinction is not very great between contempt of the laws and open resistance to them."² Lord Chief Justice Kenyon laid down the law just as uncompromisingly:

"I think this paper [a number of Perry's *Morning Chronicle*] was published with a wicked malicious intent to vilify the Government and to *make the people discontented with the Constitution* under which they live. That is the matter charged in the information: that it was done with a view to vilify the

¹ Holt, *op. cit.*, p. 65.

² *Id.*, *op. cit.*, p. 82.

Constitution, the laws, and the Government of this country, and to infuse into the minds of His Majesty's subjects a belief that they were oppressed; and on this ground I consider it as a gross and seditious libel." ¹

Similarly Mr. Baron Wood, when a printer was being tried for copying Leigh Hunt's attack on military flogging:

"It is said we have a right to discuss the acts of our Legislature. That would be a large permission indeed. Is there, gentlemen, to be a power in the people to counteract the acts of the Parliament? and is the libeller to come and *make the people dissatisfied with the Government* under which he lives? This is not to be permitted to any man: it is unconstitutional and seditious." ²

Every publication was a seditious libel if it tended—

- I. To bring into hatred or contempt,
or to excite disaffection against:
 - (1) the person of His Majesty,
his heirs and successors; or
 - (2) the Government and Constitution of the United
Kingdom as by law established; or
 - (3) either House of Parliament; or
 - (4) the administration of justice; or
- II. To excite His Majesty's subjects to attempt, otherwise
than by lawful means, the alteration of any matter in
Church or State by law established.³

¹ K. v. Perry and others (1792) in Erskine, *Speeches*, ii. 371.

² K. v. Drakard (1811) in *State Trials*, xxxi. 535. Likewise, Lord Ellenborough, C.J., in K. v. Hunt in war-time: "Can you conceive that the exhibiting the words 'One Thousand Lashes,' with strokes underneath to attract attention, could be for any other purpose than to excite disaffection? Could it have any other tendency than that of preventing men from entering into the Army?" —*Ibid.*, p. 413.

³ I know of no contemporary definition. The above is taken almost literally from Sir J. F. Stephen, *Digest*, art. 93, which seems to have been based partly on Holt's classification of libels on the King and his ministers, and partly on the rough reminder inserted in the preamble to one of the Six Acts of 1819 (60 Geo. III. c. 8), on the suggestion of the second Lord Ellenborough. Stephen noted two other equally sweeping "seditious tendencies," but they were not of great importance during this period:

- III. To raise discontent or disaffection among His Majesty's subjects; or
- IV. To promote feelings of ill-will and hostility between different classes of His Majesty's subjects.

It was thus criminal to point out any defects in the Constitution or any errors on the part of the Government, if disaffection might thereby be caused. It is uncertain whether the Press had any legal freedom whatever to criticize the authorities.

“The *Liberty of the Press* (said Lord Chief Justice Mansfield) consists in printing without any previous licence, *subject to the consequences of law*. The *licentiousness* of the Press is a Pandora’s box, the source of every evil. Miserable is the condition of individuals, dangerous is the condition of the State, if there is no certain law, or, which is the same thing, no certain administration of law, to protect individuals or to guard the State.”¹

The English law of State libel, however, was too sweeping to draw any certain line between liberty and licentiousness. The administration of that law was exceedingly uncertain, and, as we shall see, became still more so as time went on. One thing was certain, and that was that that law sprang from the natural dislike of opposition which has been common to almost all who have ever ruled. It was only very slowly that politicians became aware of the inevitability of dissent and the possibility of honest partisanship. It was not till the eighteenth century that British Ministers learned to bear with the gentlemen opposed to them in Parliament. It was not till well on in the nineteenth century that they learned to tolerate Radicals who presumed to carry on their opposition among the people outside the walls of Parliament.

The Struggle for the Freedom of the Press was a struggle for the right to oppose, a struggle for change against men who feared the unknown. It was an appeal to nature, to human nature, by men and women who found no satisfaction in having fellow-men take it on themselves to play Providence over them. Like most great English struggles for political freedom it was a religious struggle. That is why the Law of Blasphemous Libel was almost as important as the Law of Seditious Libel itself.

3. THE LAW OF THE PRESS.

Prosecution under the Common Law of Criminal Libel was not the only way of obstructing the influence of the Press: severe

¹ K. v. Dean Shipley of St. Asaph’s (1783), *State Trials*, xxi. 1040.

restrictions were also imposed by statutes which taxed paper, advertisements, newspapers, small books and pamphlets, and which fixed the size of newspapers, besides generally regulating the printing trade by a system of registration.¹ The Common Law of Criminal Libel and the statutory Law of the Press were to the unreformed Constitution like two lines of defence, and although we are here concerned mainly with the assault on the first line, we must not neglect the second, as that served as a reinforcement for the first and made the struggle against it doubly hard.

Stamps were originally a clumsy revenue-collecting device invented during the wars against Louis XIV. Anne's Tory Ministers tried to attract investments in 6 per cent. war stock by offering investors of £10 a chance of one in five of winning a prize of £18. For this purpose they in 1712 imposed a stamp duty on paper; on newspapers, pamphlets, and advertisements; on linens, silks, and calicoes; and on soap.² So for nearly a century and a half cart-loads of paper and bales of news-sheets had to be taken to the Stamp Office for each sheet to be stamped separately by hand,³ and this made impossible the use of continuous reels of paper and of rotary printing-machines.⁴

During the wars at the end of the century the newspaper stamp duty was increased from one penny in 1776 to 3½d. net in 1815. A Stamp Act of the latter year, intended to help meet the public debt charge, put a duty of fourpence gross on every piece of paper used in a "newspaper or paper containing public news, intelligence, or occurrences"; fifteen pence on every almanac, even if it consisted of only a single sheet of paper; 3s. 6d. on every advertisement in any periodical publication; and for "pamphlets"—a term which included books of 128 pages, and also literary works published in periodical parts or numbers—there was a duty of three shillings

¹ What follows owes much to C. D. Collet, *History of the Taxes on Knowledge* (1899), and to F. K. Hunt, *The Fourth Estate* (1850). Collet studied law at University College, London, in the 'thirties, before becoming a Chartist lecturer. Hunt succeeded Dickens as editor of the *Daily News*, and supported Collet in the struggle against the last penny of the newspaper duty.

² 10 Anne, c. 19.

³ R. Needham and A. Webster, *Somerset House Past and Present* (1905), 240, 257.

⁴ Charles, Earl Stanhope (1753-1816) invented a rotary press; Sir Rowland Hill also invented a rotatory press in the early eighteen-thirties at great expense; paper ceased to be stamped in 1861, and continuous webs were used by *The Times* next year.

on each edition.¹ The newspaper duty, however, was usually less than the full fourpence, as discount of 20 per cent. was allowed to any publisher who promptly paid £10 or more and did not charge more than sevenpence a copy.² Newsagents and street-sellers could be fined for lending copies of stamped newspapers, and imprisoned for selling copies of unstamped ones.³ During the twelve years 1819-30 there are known to have been over two hundred summary convictions for selling unstamped publications, mainly almanacs.⁴ During the great Battle of the Unstamped, which occupied the next five years, there were some 750 convictions, mainly for selling newspapers.⁵

As a result of these duties the circulation of newspapers was very low, only half a million copies being sold in the course of a whole week, although the population of Great Britain was over fourteen millions in 1821.⁶ Only three London newspapers had as many as three thousand copies stamped each day, and outside London there were no dailies.⁷ *The Observer* had the biggest sale per issue of all papers, and that was less than fifteen thousand copies a Sunday.⁸ The size of each paper was small, the price was high, the news was meagre. Four pages of advertisements and London and foreign reports cost sevenpence. A "ten-pound householder" would have had to pay ten pounds a year to have his own copy of a newspaper every day.

Apart from the laws imposing stamp duties on publications there were two Acts passed by the younger Pitt to regulate the printing and publishing trades. The first, passed in 1798, concerned newspapers only, and was a comparatively harmless Act

¹ 55 Geo. III. c. 185 (Great Britain only). It spoke of "pamphlets, books, or papers commonly so called . . . containing one whole sheet, and not exceeding 8 sheets 8vo . . . 12 sheets 4to . . . 20 sheets folio . . ." Lower duties were imposed on the Irish Press by 55 Geo. III. c. 78 and 56 Geo. III. c. 56: Newspapers 2d., advertisements 2s. 6d., pamphlets 2s. a sheet, handbills ½d.

² This was necessary, as the price of newspapers increased 4d. between 1776 and 1815, while the duty increased by only 3d. gross or 2½d. net.

³ 29 Geo. III. c. 50; and 16 Geo. II. c. 1.

⁴ *Accounts and Papers*, 1836 (21), xli. 427. Most of the convictions occurred during the winter months.

⁵ *Ibid.*, and 1832 (40), xxxiv. 103; 1832 (711), xxxiv. 107; 1833 (77), xxix. 37; 1834 (199), xlvii. 241. The number of men and women imprisoned or fined was less than 750, as the same persons often repeated the offence.

⁶ *Ibid.*, 1827 (530), xvii. 45; 1832 (30), xxxiv. 127. Only one person out of every forty in the British Isles had a stamped almanac in 1821; some years even fewer had one.

⁷ *Annual Register* (1822), p. 351.

⁸ *Ibid.*, p. 351.

in that it did not encroach on the Freedom of the Press, except in so far as it provided heavier penalties for a breach of the old stamp regulations.¹ It forbade the publication of a newspaper until the names and addresses of the printer, the publisher, and two proprietors had been registered along with the title of the paper by delivering an affidavit at the Stamp Office. The name and abode of the printer and publisher had to be printed on each copy. A specimen copy of each issue had to be delivered at the Stamp Office within six days of publication. The Act was "for preventing the mischiefs arising from the printing and publishing newspapers and papers of a like nature by persons not known"; it did serve to enforce the responsibility of the newspaper Press, as a public service, to society as a whole, as well as to the central Government in particular.

The next year Pitt had an Act passed suppressing political organizations with branches and forbidding public lectures on history; and this same "Corresponding Societies Act" also imposed a very strict control by local Justices of the Peace on the whole printing trade.² All who made, kept, or sold types or presses were to be registered by the Clerk of the Peace. "Anyone printing any paper for hire, reward, gain, or profit must preserve one copy and write on it the name of the person who has employed him to print it."³ Any voluntary informer would be well rewarded. And, on the orders of a magistrate, a peace officer might search for unregistered presses, types, and papers, and seize them.

Such statutes as those governing the printing-press were comparatively easy to enforce because they were fairly definite. The task of printers and of conscientious magistrates was made far harder by the frequent suspension of the Habeas Corpus Act, as it exposed the former to arbitrary punishment according to the whim of the latter. Similarly, the effect of the Libel-law would depend on the machinery for its interpretation and enforcement.

¹ 38 Geo. III. c. 78.

² *Ibid.*, c. 79.

³ Many papers thus marked can now be seen among the British Museum newspapers. There were some gaps in this Act; the author of a newspaper article was not an "employer" and might therefore remain anonymous; and handbills printed and distributed gratuitously did not come under it. See the Law-officers' opinion on a case submitted by the Borough Reeve and Constable of Manchester, H.O. 42. 193, August 31, 1819.

4. THE ENFORCEMENT OF THE LAW OF CRIMINAL LIBEL.

The efficacy of the laws expounded by Judges or passed by Parliament depended on the administrative machinery for their enforcement. Were men and women able to break the Law of Libel with impunity? or was it possible for every breach of the law to be detected and punished?

And if offenders were detected, were they tried before being punished? or were they liable to punishment before trial? We must, therefore, consider on whom Press-prosecutions depended, and what steps could be taken preliminary to trial.

There was not yet any uniform police system, and such police forces as existed were seldom effective. There were untrained Constables of Parish and of Hundred, selected by Court-Leets or Justices of the Peace, but usually hiring substitutes instead of serving in person. In cities and in boroughs there was the watch by night and the ward by day, under the control of the aldermen. In and around the Metropolis there were a few Bow-street patrols for preventive work, and a small detective force of Bow-street runners and officers on whom the personal safety of prominent persons was believed to depend, and who gave their best attention when they were specially remunerated. The only part of the later police system that had yet been organized were the Metropolitan Police Courts, or "public offices" set up by Pitt, and their stipendiary magistrates, under the supervision of the Home Office, and specially charged with preventing seditious and other misdemeanours, with issuing warrants, and with examining those who were then brought up before them.

The incomplete police organization helped to give England her Continental reputation as the proverbial land of disturbances. It made the Home Office rely on the miscellaneous information sent by whoever liked to correspond with it from an often mistaken sense of public duty, or from a desire to stand well with the dispensers of patronage.¹ The Home Office dared not wait for overt acts of disorder, but had to nip sedition in the bud, or it would be too late. Local magistrates were afraid that publications might produce public meetings, and that public meetings might

¹ H.O., 42 and 44, parcels of "domestic" correspondence, at the Public Record Office.

develop into riots which might soon be out of hand, and which they might have to requisition troops to suppress. The Home Office became responsible for the distribution of the troops on whom it depended at last resort, and for the maintenance of their discipline, and it was fearful of any disaffection in their ranks or any incitement to mutiny or to refusal of unconditional obedience.

The permanent staff of the Home Office numbered only twenty;¹ but its powers, as inheritor of what still remained of Tudor paternalism, far exceeded its capacity for wielding them. Its chief function was the maintenance of the King's Peace and the exercise of the prerogative of mercy. It dealt chiefly with common criminals and was ill-qualified to deal with political offenders. Its experience fitted it for looking at every breach of the peace through legal rather than through constitutional eyes, and for considering the letter of the law rather than the spirit of policy. Its permanent head was a barrister recently promoted from being Treasury Solicitor.² Its political head was Henry Addington, Lord Sidmouth. It was inclined to prosecute criminal libels so far as it was physically able.

There was no director of public prosecutions who would act on his own initiative in every case of criminal libel. Instead there was only the Treasury Solicitor, who did not usually begin to act until he received directions from the Home Office, by command of the Secretary of State, "to take the necessary steps for prosecuting." ³ He would then draw up a case which he would submit to the Attorney- and Solicitor-General, and "move them to report their opinion, for Lord Sidmouth's information," "whether the matter was a fit subject for criminal prosecution" or "how far the matter is libellous and what is the best way of procedure." These Law-officers were barristers in private practice, who received fees for their opinions; but they were also Members of Parliament and aspirants for offices in the gift of the Government, and they were reckoned as Ministers, though they were not members of

¹ Vincke, *Darstellung der inneren Verwaltung Grossbritanniens* (1815), p. 5 (quoted by Redlich and Hirst, *Local Government in England* (1903), ii. 238). Roughly the same size as the present office of the Director of Public Prosecutions.

² Henry Hobhouse (1776-1854), Under-Secretary of State 1817-27, later Keeper of the State Papers and commissioner for editing Henry VIII's papers; distantly related to J. C. Hobhouse.

³ George Maule was Solicitor to the Treasury in succession to Henry Hobhouse; his office was off Chancery Lane, at 5, Stone Buildings, Lincoln's Inn.

the Cabinet or of the Privy Council. Their business was simply to answer the questions that were asked of them—firstly whether the matter published was libellous and liable to criminal prosecution, and secondly what was the best way of proceeding in order to obtain a conviction; under some circumstances they might also be asked whether they thought a conviction was obtainable. Thus the most they could usually do was to recommend the procedure they thought should be adopted, as there was never any doubt about a passage being legally a libel when it was distasteful to the Government; but they did often choose the less objectionable methods of procedure, and they seldom volunteered any additional advice that would be likely to encourage prosecutions. The holding of a law-office of the Crown was a recognized road to promotion to the Bench or the Woolsack. Changes of Law-officers were, therefore, very frequent, Attorney- and Solicitor-Generals were, therefore, as a rule guided more by their own ideas than by personal experience in office or by departmental tradition, and this tendency was increased by the fact that half of them had been Whigs.¹ When the Treasury Solicitor received their meagre replies, he sent the case, with the Law-officers' signed opinion thereon, to the Home Secretary, who noted on it his decision. Thus the responsibility for a State prosecution lay with the Home Secretary, as he alone had to decide the wider question not of law but of public policy, and as no legal expert moved unless moved by him.

While there was no uniform system of police and prosecution for the whole country, the Home Office had the difficult task of co-ordinating the voluntary efforts of the unpaid local magistrates. It had to encourage "the respectable part of the community" to exert themselves to prevent disorder and to act in co-operation with Whitehall. They had to feel that their efforts were appreciated; they had to be stimulated by the expectation of legal, financial, and military support; they had to be trusted to take responsibility: the result was that they were no longer afraid to repress riots as they had been a generation back. Yet they had to be restrained from having every little bill or prospectus or

¹ There were 9 Attorney- and Solicitor-Generals during the 12 years 1818-1830. Eldon reckoned that there were 18 during the 20 years ending 1824, and that frequent changes were a great mischief.—H. Twiss, *Life*, ii. 512. Gifford and Copley, however, had over six years each. Notable ex-Whigs between 1806 and 1830 were Gibbs, Best, Copley, Scarlett, all of whom became Judges.

caricature prosecuted, and the Government refused to incur odium by instructing the Attorney-General to prosecute libels that defamed the local magistrates and yeomanry.¹ Local prosecutions were sometimes begun by the Treasury Solicitor; sometimes they were commenced by the local magistrates, but brought to trial by the Treasury Solicitor; sometimes they would be carried right through by the local magistrates, but in any case it was usual for the Treasury to discharge all reasonable expenses incurred in the prosecution if it was asked to.²

Even with the help of this system of grants in aid of local prosecutions, in addition to the prosecutions directly instituted by the Home Office, the whole field of libel was far from being covered. The gap was to some extent filled by voluntary subscription societies which had been established during the last generation. For general police purposes county associations had been established to help the Justices in Quarter Sessions to repress depredations on life and property.³ For some limited objects the Evangelical Revival had inspired a revival of seventeenth-century societies for the reformation of manners, by exhortation when possible, or by prosecution "in cases of persevering obstinacy." George III and the Home Secretary had favoured the movement with a Proclamation for the encouragement of piety and virtue, and for the preventing and punishing of vice, profaneness, and immorality; "also to suppress all loose and licentious prints, books, and publications, dispersing poison to the minds of the young and unwary; and to punish the publishers and venders thereof." ⁴ With Wilberforce's support a "Proclamation Society" was thereupon formed; it lessened the number of Sunday card-parties,

¹ When the Mayor of Liverpool sent in a libellous caricature, Lord Sidmouth "does not deem it advisable to make the print the subject of a criminal prosecution."—H.O., 41. 4, p. 532 (August 28, 1819).

"Where the slander is exclusively directed against the gentlemen of Manchester . . . his lordship conceives that a prosecution would be instituted with a better effect by the parties traduced than by the Government."—H.O., 41. 5, p. 81 (October 2, 1819).

² H.O. sent accounts to Treasury Solicitor, who reduced them to a reasonable figure and returned them. H.O. then sent them to the Treasury, and the Lords of the Treasury had them sent back to their Solicitor with directions "to discharge the account of the expenses incurred," "out of the monies impressed into his hands for conducting criminal prosecutions."—E.g. H.O., 41. 5, pp. 222, 417, 436, etc.

³ S. Webb, *History of Liquor Licensing*, p. 140.

⁴ June 1, 1787.

Parliamentary dinners, concerts, and clubs; it suppressed many wakes and other pagan diversions which interfered with work and religion; it tried to suppress Sunday newspapers; and it retained Erskine for the prosecution of the publisher of Paine's *Age of Reason*.

In 1802 there was established a similar but less official "Society for the Suppression of Vice and the encouragement of religion and virtue, throughout the United Kingdom, to consist of members of the Established Church." The special objects of its attention were Sunday trade and labour, licentious and obscene books and prints, disorderly houses, cruelty to animals, selling by false weights, lotteries, and breaches of the peace. Prevention or punishment were its alternative methods. It wished to rouse the "higher ranks" "to discharge their religious duties." It regarded Napoleon as "the appointed instrument of Divine Justice on our offences," and wished to profit by that "salutary correction" before it was too late. In its address to "the friends of social order" it referred specially to "the late usurpation of Reason over Revelation." "Infidelity and Insubordination, fostered by the licentiousness of the Press, have raised into existence a pestilent swarm of *blasphemous, licentious, and obscene books and prints*, which are insinuating their way into the recesses of private life, to the destruction of all purity of sentiment and all correctness of principle." It specially wished to prevent the perversion of the minds and the corruption of the hearts of the rising generation: "children's books have . . . been found a most successful channel for the conveyance of infidel and licentious tenets"; in them it found "virtue distorted and carried to a vicious extreme; loose, wild, and disorderly notions of sentiment and feeling substituted for the established rules of right and wrong." Before the end of 1803 it numbered over eight hundred members, and had obtained nearly seven hundred convictions, seven of which were for obscene libels.¹ Later, the Proclamation Society was merged in it; and it prosecuted blasphemous as well as obscene publications, dealing

¹ In 1803 the president was the Earl of Dartmouth; Patrick Colquhoun was a vice-president; Charles Rivington, publisher, was on the committee; Mrs. Trimmer was a member; Wilberforce was not. In 1825 it had only 240 subscribers; three were bishops; eight were lords, including Stowell; seven were M.P.'s; Wilberforce, Zachary Macaulay, Charles Simeon, Bowdler, Nicholas Charrington, and Eton College were among the members.

with fourteen important cases of the former and twenty of the latter between 1817 and 1825.¹ It did not touch seditious libels directly, although it formed a model for other societies with that object; but it assumed the identity of religious, moral, social, and political insubordination, and it thought that in confining itself to quasi-religious questions it was going to the root of the problem. As its secretary and solicitor told a Parliamentary Committee in 1817, "The influences of religious obligation seem much on the decline among the lower orders of society, to which is probably attributable much of that impatience under civil restraint which is the characteristic feature of the times."²

The Home Office, the local magistracy, and a subscription society were, then, the three chief agents for the enforcement of the Law of Criminal Libel. Blasphemous libels were almost certain of prosecution at the instance of one of the three bodies, and seditious libels risked prosecution at the hands of the two former.

5. PUNISHMENT BEFORE TRIAL.

So long as the Law of Criminal Libel was enforced any person was liable to punishment without trial who was in any way concerned with the dissemination of anything which a Judge, a Justice of the Peace, or a Crown Law-officer imagined to be libellous; and this was so whether the procedure was by Indictment or whether by Information.

If proceedings were by *Indictment*, there could be no trial unless twelve men on a Grand Jury considered that a *prima facie* case had been made out, so as to justify their finding a True Bill. But an indictable misdemeanour could also be proceeded against by a *Criminal Information*, and the case would not go before a Grand Jury if this course were followed. Ordinarily the Information would be filed by an officer of the Court of King's Bench, on the applica-

¹ The obscene "publications" included foreign toys and painted snuff-boxes displayed in tobacconists' windows.

² *Proposal for Establishing a Society for the Suppression of Vice* . . . (1802). *Address to the Public from the Society* . . . (1803). *Second Address* . . . (1803), containing lists of members and convictions.

Society for the Suppression of Vice (1825), containing minutes of the evidence of Prichard, its secretary, before the Police Committee of the Commons (May 1, 1817), and also a list of members. Some occasional reports are referred to in this last (p. 48); but they are not in the British Museum.

tion of counsel and with the leave of the Court. The two Law-officers of the Crown, however, were able *ex officio* to file such Informations on their own responsibility: instead of running the risk of having their Bill "ignored" by a Grand Jury they were able to stigmatize whatever they prosecuted as a libel; and the person charged in this way would have to pay all costs, even if subsequently acquitted or never tried. This filing of *ex-officio* Informations was the usual method chosen by Attorney-Generals in prosecuting Criminal Libels, especially in London, where the Government had little reason to expect a Grand Jury to endorse its Bills. In 1819 thirty-three informations were thus filed against booksellers and newsagents for political libel, and only one-third of them were prosecuted to conviction.¹

It then became possible for any Judge of the Court of King's Bench to issue a warrant under which the person prosecuted could be brought before him or before any Justice of the Peace and bound with two sufficient sureties to appear at the Court, "and in case any such person shall neglect or refuse to become bound as aforesaid, it shall be lawful for such Judge or Justice respectively to commit such person to the common gaol . . . and there to remain until he or she shall become bound as aforesaid, or shall be discharged. . . ." ²

Thus a person could "be imprisoned for a misdemeanour before he was found guilty of the slightest offence, and . . . kept in prison till the trial, which his prosecutor might delay as long as he pleased. . . . A man not guilty of any crime might be imprisoned for more months than the Judge might punish another person who was found guilty." ³

The person might be taken into custody late in the afternoon and confined in a lock-up for the night, or, if arrested on Saturday,

¹ *Commons Journals* (1821), lxxvi. 1209. During the ten years 1808-17, thirty-five *ex-officio* informations were filed for political libel, only twelve of them leading up to sentences. Proceeding by Information had definitely passed out of fashion by the 'thirties; see the moderate *Law Magazine*, ix. 361 (May 1833), xi. (May 1834).

² 48 Geo. III. c. 58. The Bill passed through the Commons unnoticed along with some revenue Bills (March 25, 1808). In the Lords it was detected by Stanhope (April 19), defended by Lord Chief Justice Ellenborough (*ibid.*), attacked by Erskine (April 24th), and passed by a majority of 7 in a house of 19 (April 30th). It was probably drawn up by Attorney-General Sir Vicary Gibbs, the prosecutor of Cobbett, Perry, and John and Leigh Hunt.—*Commons Journals*, lxxiii. 211; *Hansard*, xi. *passim*.

³ "Citizen" Stanhope, House of Lords, April 19, 1808.—*Hansard*, xi.

or the week-end, before being brought before a Judge or Justice.¹ Then if he could not find the bail demanded—and it was sometimes as high as £1,000—he might be kept in gaol as much as eighteen weeks, and then perhaps discharged without ever being brought to trial.² If he were able to find sureties they might be objected to, or forty-eight hours' notice of bail might be demanded by the prosecuting counsel and the Justice.³ Security might be demanded not only for appearance but also for good behaviour, which probably meant that bail would be forfeit if the same person sold another copy of a publication that was distasteful to officers of the Crown.⁴

The Act of 1808 had recognized the power of Judges to issue warrants for the apprehension of those who were being presented by indictment or information. Similarly, in 1817 the Home Secretary sent out a circular letter informing all Justices of the Peace that they were likewise entitled to issue warrants for the arrest of anyone charged on oath, by any informer, with selling libels.⁵ Lord Sidmouth did this on the advice of the Attorney- and Solicitor-General, and their opinion was based not on any statute or on any judicial decision, but only on the action of one of their predecessors.⁶

This power was much appreciated by the prosecuting societies,⁷ and it was one of which the Home Office was constantly reminding magistrates when they complained of the prevalence of criminal

¹ Cases of John Thelwall (1821) and William Hone (1817).

² Cases of William Hone and Richard Carlile, 1817.

³ James Atkinson, 1821.

⁴ John Thelwall and Thomas Dolby, 1821.

⁵ March 27, 1817.

⁶ Attorney-General William Garrow and Solicitor-General Samuel Shepherd said: "There is no decision or opinion that a J.P. might not apprehend any person on a charge of libel (such a person not being a Member of Parliament), and demand bail to be given to answer the charge. It certainly has been the opinion of one of our most learned predecessors that such warrants may be issued and acted upon by J.P.'s, as appears by the case of Thomas Spence and Alexander Hogg in the year 1801. We agree in the opinion, and therefore think that a J.P. may issue a warrant to apprehend a person charged by information on oath with the publication of a scandalous and seditious libel, and to compel him to give bail to answer such charge." "Here, then, is Attorney-General-made law: and on this the Home Secretary acted," commented Place.—*On the Law of Libel*. *The Times* likened the circular to the case of Hampden and the ship money, the Crown getting an *ex-parte* statement from its servants, of what are and what are not our liberties, who may and who may not be imprisoned, and publishing that opinion as the law of the land.—June 27, 1817.

Soc. Sup. V. (1825).

libels. Lord Sidmouth himself wrote to a baronet in 1819 regretting that it was not illegal to hawk books and pamphlets without a hawker's licence;

But [he continued] you are doubtless aware that itinerant venders of seditious and blasphemous libels may be apprehended and held to bail, and by these means the dissemination of this, the worst description of poison, has been considerably checked in many parts of the Kingdom.¹

Now that the seller of a libel could be punished without trial, magistrates had less reason for stretching their summary jurisdiction, as a Shropshire rector had done who wrote early in 1817:

About two months since I caused two men to be apprehended under the Vagrant Act who were distributing Cobbett's pamphlets, and had them *well flogged at the whipping-post*: since which I have heard of no others being circulated in this neighbourhood. . . .²

6. TRIAL BY JURY.

Trial by Jury must have seemed to the Radicals only the lesser of two evils, as it allowed men and women to be convicted for propagating views contrary to those held by twelve jurors, and as it did not prevent arbitrary punishment before trial. But it did at least prevent convictions that were not supported by such public opinion as the jury represented, and it was therefore revered by Whigs and Radicals alike. After an acquittal lists would be published of the twelve "Men who have dared to be honest in the worst of times"; and "Friends of the Liberty of the Press and of Trial by Jury" would dine together in public.³

This right, such as it was, had been extended to trials for criminal libel only within the memory of men still living, and it was still far from satisfactory.

Eighteenth-century juries had not been thought competent to give a verdict upon the whole question at issue.⁴ Instead their attention had been directed to two questions only: firstly, did the

¹ Copy of letter of Sir George Shiffner, Bart., September 19, 1819.—H.O., 41. 5, p. 45 (*Disturbance Book*).

² Letter from the Rector of Broseley on Severn, in a district inhabited by colliers and furnace-men, February 6, 1817.—H.O., 42. 159.

³ E.g., after Hone's acquittal, dinner at City of London Tavern, Bishopsgate (now the Wesleyan Missionary Society), December 29, 1817.

⁴ Stephen, *History of English Criminal Law*, ii.

defendant publish the paper charged to be a libel or did he not? And secondly, did it have the meaning averred in the indictment or information?—for instance, did H—— of C—— mean House of Commons, and did Matthew mean the Holy Evangelist Saint Matthew? Accordingly, juries had returned “special” verdicts of Guilty if they considered that a defendant was proved guilty of the publication and innuendoes averred; but they had not decided on the “general” issue of whether he was guilty of criminal libel. Nor had the Judges had to decide whether the work was a libel before it could be made the ground for conviction. Thus there was little chance of obtaining an acquittal, and the only way of quashing a verdict was by the expensive and troublesome process of a motion for arrest of judgement.

This was well shown in the trial of Dean Shipley of St. Asaph at the Assizes in 1783, for “publishing” an alleged seditious libel written by his brother-in-law.¹ The jury returned a verdict of “Guilty of publishing only,” and a dispute ensued as to the meaning of “only,” in the course of which the Judge threatened to commit Erskine, who was counsel for the defendant, if he did not sit down, with the result that the jury accepted the Judge’s view that “only” meant that the jury did not know whether or not the pamphlet was a libel. Next term Erskine “moved the Court of King’s Bench for a new trial, for a misdirection of the Judge, and misconduct after the verdict was returned into Court. I made the motion from no hope of success, but from a fixed resolution to expose to public contempt the doctrines fastened on the public as law by Lord Chief Justice Mansfield, and to excite if possible the attention of Parliament to so great an object of natural freedom.”²

Mansfield, in reply, surveyed the practice from the Revolution to the present time, and declared it was not to be shaken by general theory or popular declamation. “He put me aside,” said Erskine ten years later, “with indulgence, as you do a child who is lisping its prattle out of season.”³ Finally, after great expense, judgement was arrested, because the Judges decided that the matter set forth in the indictment was not libellous.

¹ *State Trials*, xxi.

² J. Campbell, *Lives of the Chancellors*, vii. 277 n.

³ R. v. Thomas Paine, *State Trials*.

42 THE STRUGGLE FOR THE FREEDOM OF THE PRESS

After much discussion an agreed measure of reform, usually known as Fox's Libel Act, was passed at the beginning of 1792.¹ It enacted:

That on every such trial [for criminal libel] the jury sworn to try the issue may give a *general verdict of Guilty or Not Guilty upon the whole matter put in issue* upon such indictment and information; and shall not be required or directed, by the Court or Judge before whom such indictment or information is tried, to find the defendant or defendants Guilty merely on the proof of the *publication* by such defendant or defendants of the paper charged to be a libel, and of the *sense* ascribed to the same in such indictment or information.

To this the future Lord Eldon, who was then Solicitor-General, had added the proviso:

Provided always that, on every such trial, *the Court or Judge* before whom such indictment or information shall be tried shall, *according to their or his discretion, give their or his opinion and direction to the jury* on the matter in issue between the King and the defendant or defendants, *in like manner as in other criminal cases.*"²

Henceforward, if the Judge thought the jury ought to acquit, he ought to say so; in any case, it would rest with the jury to decide whether the particular case before them came within their idea of a libel after its nature had been suggested to them by the Judge. They would become judges not only of the fact, but also of whether that fact came within the scope of the law. This being the case, Judges unnecessarily incurred much odium by interpreting the proviso as an absolute command. For instance, Lord Chief Justice Ellenborough said:

He would deliver them his solemn opinion, as he was required by Act of Parliament to do; and under the authority of that Act, and still more in obedience to his conscience and his God, he pronounced this to be a most impious and profane libel."³

On the other hand, there were some who recognized the new freedom of the jury. For instance, Ellenborough's successor said:

Although it was the business of the jury to determine the questions of libel or no libel, it was expected of the Judge that he should deliver his

¹ 32 Geo. III. c. 60, "An Act to remove doubts respecting the functions of juries in cases of libel."

² H. Twiss, *Life of Lord Chancellor Eldon*, i. 206-7.

³ *Second Trial of William Hone* (1817), p. 45.

opinion upon the nature of the publication; the verdict was, however, to be the verdict of the jury according to their consciences, and the opinion of the Judge was to assist and not to direct them.¹

The power given to a jury was not the only thing that mattered. To be relied upon as a check upon Crown-appointed Judges and partisan prosecutors, it was necessary for a jury to be selected in such a way that there should be a reasonable chance of its representing average public opinion. But the Special Juries then employed were chosen on a system so defective in principle that it could not possibly inspire confidence. Lists of men who were qualified to serve on juries were sent in to the Sheriffs from the parishes by petty constables who were frequently unable to read or write and who often omitted or inserted names for a small gratuity. Some of these were specially distinguished by the constables as "Merchant" in the City, or as "Esquire" in other places, and these "additions" qualified their owners for Special Jury service.² Whenever any party at King's Bench claimed a Special Jury—and in libel cases such a claim was invariably made by the prosecutor and not by the defendant—the book would be sent by the Sheriff to the Master of the Crown Office, who would "nominate" forty-eight of those thus specially qualified, and in making this selection he could do nothing illegal or improper, as he possessed discretionary powers limited only by his conscience.³ Then each party would be at liberty to discard twelve of these names, the Treasury Solicitor representing the Government, and the remaining twenty-four names would be sent to the Sheriff, whose duty it was to summon them all. Finally, of those that actually appeared, the twelve whose names stood first on the list would serve and receive a guinea for each cause they tried; and if less than twelve appeared they would be supplemented by "talesmen" taken from among the bystanders.

Horne Tooke had said that, when he attended to see the forty-eight nominated, the Master had passed over those designated

¹ *First Trial of William Hone* (1817), p. 47 sq.

² *Petty Constable's Guide in Making up the Jury List* (1821), in *Place Collection of Newspaper Cuttings*, XXXIX. ii. 121.

³ The Master and Sheriff received fees of £21.—*Bill for Costs in the Court of King's Bench* (1819).

To Wooler, the Sheriff was the "country packer" and the Master the "town picker." To Bentham the Master was the "master packer" or "grand elector."

"wine-merchant" or "rag-merchant," or anything but plain "merchant," unless he personally knew them to be in reputable circumstances. The Treasury Solicitor and others had been standing by, and if a name which they did not like occurred they said: "Oh, sir, he is dead"; "Sir, that man is retired"; "Sir, this man will not attend." And to tell the defendant he was free to reject twelve he disliked was like offering him a basket of rotten oranges and telling him to throw out those that were bad.¹

Exactly forty years later T. J. Wooler, an acquaintance of Bentham and a friend of Cartwright, was prosecuted for libel; he then turned law-reformer, and an agitation, in the course of which his weekly paper had appeared with a black border mourning the death of Trial by Jury, ended with a report to the Common Council of the City of London by a committee it appointed to examine the books and lists of persons qualified to serve on juries in the City.² It showed that "Special Juries were nominated from a book containing a list of names inserted at the discretion or caprice of the *Secondary*, who had *placed such names on the book as he pleased* and had *struck such names off as he pleased*; that he professed to be regulated in this practice by the *recommendation of other special jurymen*, of some attorneys, and of the Sheriff, which he considered himself at liberty to adopt or to reject as he thought proper."³ It contained the names of only 485 "merchants" for the whole City; of these 226 were actually unqualified, as they were dead, or for some other reason were not householders within the City; and only 274 had been summoned during the previous three terms, although over one hundred cases had been tried. During that period three men had actually earned a guinea a week by jury service; forty others had been summoned for over twenty cases each; fifty others had been summoned for over ten cases each. On at least one occasion a letter had been received

¹ K. v. Horne (1777) in *State Trials*, xx. 687 sqq., quoted by Bentham in *Elements of the Art of Packing in Works*, v. 103, and by H. Bright in Commons (May 28, 1823).—*Hansard*, ix. 570.

² K. v. Wooler (1817, *vide infra*). He received much help from his solicitor, Charles Pearson. *Black Dwarf* (December 3, 1817) in mourning. Wooler, *Appeal to Citizens of London* (1817), a 32 pp. 6d. pamphlet, now in *Place Collection of Newspaper Cuttings*, XXXIX. i. 165. *Morning Chronicle* (December 10, 1817).

³ (F. Place) *On the Law of Libel* (1823), with personal reminiscences.

from the Treasury Solicitor inquiring into the political sentiments of a jury appointed to try a case to which the Government was a party.

The City of London Special Jury List was accordingly reformed in 1817, and Trial by Jury became a reality at the Guildhall. But the method of selection remained liable to abuse elsewhere, so that when Wooler came to be tried at Warwick in 1820 there were only fifty-four men on the Sheriff's list in that county from whom the forty-eight were to be chosen.¹ And it was feared that Sheriffs neglected to summon special jurors favourable to the defendant, and that men whose names stood low in the list paid to have prior names omitted.²

"The Elements of the Art of Packing," according to Bentham, consisted in corrupting the jurors, whose duty it was to check the Judge, by keeping a regular corps of special jurors, who had come to take their orders from the servants of the Crown, by whom they were paid, and by passing over the names of those who were lacking in obsequiousness without the corruption being apparent.

Of those secretly enlisted and, though without words of command publicly delivered, not the less disciplined troops [he wrote] the *number* is of course, not known. But so well is the *nature* of them known, that it has obtained for them a familiar name; the corps being termed the *Guinea Corps*; the members of it collectively *Guineamen*; and, if taken separately, this or that one is familiarly spoken of as being *concerned and interested in the Guinea trade*.³

It may be viewed as one of the main props of all other abuses [wrote Richard Carlile] by its power to shackle the Press and to deter timidity from all just exposition of real abuses. It is the counterpart of an inquisition that can punish without the intervention of a jury; it produces, in fact, a mock trial before a mock jury of twelve men selected to bow to the nod of the Judge.⁴

¹ Peel in Commons (March 9, 1825).—*Hansard* xii. 968.

² *K. v. Wooler and Cartwright*.—*Annual Register* (1820), p. 958. *K. v. John Hunt*.—*Examiner* (May 27, 1821).

³ Bentham, *Elements of the Art of Packing as Applied to Special Juries, particularly in Cases of Libel Law* (written 1809, published 1821), in *Works*, v. 79.

⁴ *Rep.*, vii. 353-54 (March 21, 1823). Similarly Wooler in *Black Dwarf* (November 26, 1817):

"This is the jury that cast [convicted],
Which was pricked by the Master,
Who held his place of the Judge,
Who was appointed by the Minister,
That accused the man of libel."

The Judge on the bench was no more free from stricture than the jury in the box. Both alike seemed to be biased against the defendant, not only by sentiment but also by interest. Between 1818 and 1832, however, there was only one among the four Judges on the King's Bench who had ever been Attorney- or Solicitor-General, a method of promotion which hardly qualified a man to judge in a political case, and which was specially objectionable before the day of representative government; and for the first time for many years the Chief Justice, Sir Charles Abbott, was a scholar who had never been a Minister of the Crown, had never even sat in Parliament, a bad advocate and a born judge.¹ Their task was not easy when defendants tried to treat courts of law as Royal commissions of inquiry into the truth of Christianity and the perfection of Parliament; but only the passionate Mr. Justice Best yielded to the temptation to treat the Courts as preaching-places. Yet they had to reduce the principles and rules of the Law of Criminal Libel to precision, and a Chief Justice had the reputation of being, in Bentham's phrase, "the master manufacturer of Libel-law, and in effect the absolute master of the Press."²

The worst abuses, however, were outside King's Bench. At quarter sessions and in Scotland trials and judgements were insufficiently checked by publicity; and this was to some extent still so even at Assizes, where more responsibility rested with single Judges, some of whom were not ordinarily engaged in expounding the criminal law. Accordingly, they were sometimes to be found accusing defendants instead of sitting like oracles to propound the law and sometimes limiting the rights of juries.³ No remedy was to be had by Appeal to a Court presided over by Lord Chancellor Eldon, and even for that purpose a writ of error would have had to be obtained from the Attorney-General which, as a defendant once told the City Recorder, "would indeed be realizing the vulgar proverb of 'out of the frying-pan into the fire.'"⁴

The general feeling that fair play was not given to those who

¹ Eulogy by his Whig friend, John Lord Campbell, *Lives of the Chief Justices*, iv. 355 sqq.

² *Works*, v. 98 (Art of Packing).

³ *Edinburgh Review*, xxxvi. 175, on *Nomination of Scottish Juries*, October 1821.

⁴ *R. v. Haley, Rep.*, x. 88.

were prosecuted for libels was augmented by the unnecessary expensiveness of law proceedings in an age when it could be said, without much exaggeration, that "the price of the remedy is a greater grievance than the evil."¹ To begin with, however poor he might be, "a man accused is not merely not furnished with a copy of the accusation against him (except in the case of High Treason), but he is prevented, as far as expense will prevent him, from obtaining one."² Then witnesses for the prosecution would be paid their expenses, but not those for the defence; if they had to be brought from a distance to wait some while for a case to come on, the expense was great; and if at the last minute the case were removed to Westminster by writ of *certiorari*, it was ruinous to the poor defendant.³

The prosecuting-societies, especially, did not hesitate to take every unfair advantage that an antiquated judicial system allowed them, and it was often cheaper for an accused man to pay the expenses so far incurred by his prosecutors, so as to stay the prosecution, however vexatious it might be, rather than run the risk of trial by an expensive jury, and of the increased costs which would fall to him to pay, along with the penalty imposed by the Court.

At every turn there were fees to pay, as few courts officers had salaries. Counsel would make it a point of honour to pay them, and for this reason, as well as because of the cost of Counsel's own services and the unwillingness even of Whig barristers to defend criminal libels, most ordinary men and women had to dispense with legal aid. The idea that every man could be his own lawyer led many untrained men for the first time in the footsteps of Horne Tooke's and Perry's achievements: Hone and Wooler distinguished themselves; Carlile and John Hunt and many more failed tragically; so did Cobbett at the first attempt. They paid the cost of "having fools for their clients," not only in conviction, which was in most cases unavoidable, but also in incurring fines or commitment for contempt of Court in the course of their defence.

So far as penalties were concerned, the days of ear-clipping and

¹ R. Carlile (1824) in *Rep.*, ix. 766.

² *Yellow Dwarf* (January 3, 1818). Similarly Wooler, *Black Dwarf* (1817), i. 261, and Thelwall, *Champion* (May 6, 1821).

³ *R. v. Ridgeway*, *infra*, Ch. VI. sect. 4.

nose-slitting and hand-lobbing had gone. Even the pillory was abolished in 1816, though many deplored its loss.¹ But punishments just as severe still remained. The threefold sentence of imprisonment, fine, and security for good behaviour was still imposed: and those who could not pay were kept in prison for as many more years as the Home Secretary liked. For the rich there were still further penalties, invented in the Court of Equity and imposed without any trial by jury. No one could have property-rights in anything criminal; so the poet and the scientist could have no copyright in anything Lord Chancellor Eldon thought libellous. And Shelley was prohibited from bringing his own children up because he had written *Queen Mab*.

¹ Michael Angelo Taylor's Act, 56 Geo. III. c. 138.

CHAPTER TWO

THE PRESS AND THE REFORM CRISIS, 1819

1. THE BEGINNING OF "TWO PENNY TRASH," 1816.
2. A "LITTER OF LIBELLERS," 1817.
3. "TIMES THAT TRY MEN'S SOULS," 1819.
4. THE RESURRECTION OF THOMAS PAINE.
5. THE PRESS PROBLEM AND THE REFORM CRISIS.

1. THE BEGINNING OF "TWO PENNY TRASH," 1816.

THE almost complete freedom from the fear of political prosecution which has been enjoyed by the British Press for nearly a hundred years was achieved during the struggle for democracy which followed the victory of British nationalism and European dynasticism over Napoleon Bonaparte and his armies. The Peace of 1815 brought distress and disillusionment instead of plenty. This distress may have been caused by international economic forces, or by the mistaken financial policy of the Tory Government of the day. The Government had failed to secure the welfare of its subjects, and the criticism of many of them went to what seemed the root of the trouble: they sought a remedy in a change of Constitution rather than in a change of policy or of men. Without a radical reform which would give them a share in the power of government they could have no hope for a share in its benefits. They saw place-hunting and borough-mongering, pensions, sinecures and patronage. They saw a corn-law passed to keep the price of wheat up to eighty shillings a quarter, on the assumption that rents would thus be kept high and that the high rents were necessary to keep up the landed interest on which the government of Church and State was assumed to depend. There was quite definitely an irresponsible governing class which was not accustomed to having its achievements judged and the very bases of its power questioned by its subjects. So it was that, in the first lean years of peace, the normal apathy and inertia of "the lower orders" became turned to antipathy and opposition towards "their

bettters." Days and months of enforced idleness, following on long hours of labour, gave men and women an ignorant interest in politics, and it was rather as rebels than as subjects that they demanded the enfranchisement that is the essence of civic right.

Ever since 1780 there had been a handful of well-to-do "patriots," in the Cities of London and Westminster, who had made annual elections, manhood suffrage, and the secret ballot the three planks of their platform of Radical Reform. In 1816 old Major Cartwright of the militia, as great a pioneer in political reform as his clerical brother was in weaving, toured the provinces, established Hampden Clubs in industrial districts, and gave a political bent to popular disaffection.¹

The discontent among the manual workers of the provinces was not, in its first stage, political. It was diverted into that channel only by the influence of a few men from the Metropolis. They might have used the platform, as Orator Hunt did; but the platform was easily suppressed in 1817 and 1819. They might have established political clubs and federations, as Cartwright tried to do, and as had been done in the eighteenth century till Pitt made them illegal; and they might have organized monster petitions, as they did do at first. But there was a third way which avoided the need for personal contact and physical exposure: the printing-press might be used for disseminating democratic utterances, and it might serve also to multiply and to perpetuate their influence.

Radical publications, however, would be specially liable to prosecution for criminal libel, and not all classes of publishers were likely to take this risk, or to be likely to appeal to the minds or the pockets of working-class readers.

The previous fifty years had seen a great development of periodical publications among the middle ranks of society. It was just on two hundred years since the first newspaper had appeared with foreign news, and proceedings in Parliament and in the courts of law were now regularly and comparatively fully reported; American and French wars had increased the desire for the latest news; foreign intelligence, though biased, could easily be obtained from the British Foreign Office, or from rival parties abroad;

¹ Next year (1817) his popular *Bill of Rights and Liberties, or an Act for a Constitutional Parliament*, was published by Effingham Wilson.

comments in leading articles had been added to advertisements and news; the opinion-forming power of commercial journalism was recognized; *The Times* was printed by machinery and by steam, instead of by the simple hand-press; for some twenty years the term "Press" had been applied to printed periodicals as well as to the machine that printed them. Meanwhile other classes of periodicals had come into existence or attained to distinction, in the shape of monthly or quarterly magazines and reviews. But newspapers, monthly magazines, and quarterly reviews were all alike in that they constituted "the respectable part of the Press"; and though some joined in the struggle for political freedom, few had to struggle for their own existence in any but a commercial sense.

But there were other kinds of publications in which the printing-press brought forth a litter of libellers, who took liberties with the laws, who had as great a reputation for licentiousness as the others had for respectability, and who had to struggle continually for freedom from prosecution. It was not the newspaper or magazine or great review that bore the brunt of the struggle, but the book, the pamphlet, and another class of periodical for which no simple name has yet been found, but which was then usually called a weekly pamphlet, or a weekly political register. It was composed mainly of weeklies, and these were primarily political, but were sometimes also literary or dramatic. They differed from the great reviews in that they reviewed current events rather than general policies; they differed from newspapers in that they aimed at moulding events rather than at recording them. They differed from both newspapers and reviews in that each political weekly expressed the personality of a single, almost unassisted individual. The newspaper was nearly always primarily a commercial concern, consisting largely of advertisements, and not venturing on comment till early in the nineteenth century; but most of these small political weeklies existed for influence rather than affluence.

Governments once tried to influence electorates through Swift's *Examiner* and Smollett's *Briton*: individuals had since tried to influence Governments through the *North Briton* of Wilkes and Churchill and the *Anti-Jacobin* of Gifford and Canning, and several notable papers of this kind were instituted early in the nineteenth century. *Cobbett's Weekly Political Register* was a

sixteen-page octavo pamphlet, first published in 1802; but it was sold for a shilling and a halfpenny, and bore a newspaper stamp, as it contained a kind of news-letter, followed sometimes by items of news, official documents, Parliamentary debates, or letters received. In 1808 John Hunt produced his Sunday *Examiner*, with which his more famous brother, Leigh Hunt, was for some time connected. William Cobbett spent two years (1810-12) in prison for denouncing the flogging by German mercenaries of English countrymen who had been forced to join the militia; and the Hunts were likewise imprisoned for two years (1813-15), after three previous abortive prosecutions, for an unflattering description of the Prince Regent.¹

These political weeklies were the means by which London writers voiced what they took to be the interests of the otherwise unrepresented people. But he who agitated in the interests of others needed their support. He had to try to make his opinion their opinion, so that they might together accomplish what he could never do alone. Now in 1819 there were unprecedented opportunities for this. Sunday schools and subscription societies had taught many men and women to read, especially since the Evangelical Revival had suggested to the upper classes the new duty of educating the lower orders. Religious tract and Bible societies existed for providing them with reading-matter. Seven-penny newspapers were too dear to buy daily, though some men, especially in London, may have been able to see newspapers at public-houses, dining-rooms, or coffee-shops.

The great age of reading-rooms and mechanics' institutes had not yet come. Here was a dumb demand ready to devour a cheap supply, and the pioneer purveyors were to be demagogues anxious to instruct the masses rather than publishers bent on exploiting a new market.

It was William Cobbett who saw the possibilities of the new situation, and on November 2, 1816, he brought out the first twopenny political weekly. As one of his exceptionally magnanimous imitators said: "The invention of printing itself scarcely did more for the diffusion of knowledge and the enlightening of the mind than has been effected by the Cheap Press of this country. Thanks to Cobbett! The commencement of his twopenny register

¹ Leigh Hunt, *Autobiography*, Ch. XIII.

was an era in the annals of knowledge and politics which deserves eternal commemoration.”¹

Cobbett distrusted the ordinary party Press, and desired to impress on the people that the root-cause of their distress was political and constitutional, and that it was not due primarily to either machinery or profiteering. The week before he made the venture he wrote: ²

. . . the newspapers which are notoriously devoted to corruption are continually endeavouring to rouse and to direct the rage of the people against bakers, brewers, and butchers. The corrupt men know very well what is the real cause of the people's suffering: but their object is, first, to turn their eyes away from that real cause, and, next, to stir them up to acts of violence against tradesmen who are fellow-sufferers with themselves; because by so stirring them up an excuse is afforded for quelling them by force of arms. Let the people always bear this in mind, that nothing pleases Corruption so much as to see Troops called forth for the purpose of protecting innocent Farmers and Tradesmen against misguided violence: and that nothing is so sorrowful a sight to the friends of freedom.

I am, for my part, so deeply impressed with the magnitude of this evil that I propose to address, in my next Register, *a Letter to the Labourers and Journeymen of this Kingdom*, calculated to lay before them a perfect knowledge of the real causes of their sufferings, and to preserve the tranquillity and to restore the happiness of that country. That this intended letter may have as wide a circulation as possible it is my intention to cause it *to be published afterwards on a single open sheet of paper* and to cause it *to be sold at a very low price*. . . .

Open sheets, that is to say, a sheet of paper not folded up nor printed with an intention to be folded up, requires no stamp, and may be printed and sold without any. The whole of one of my Registers might be printed in rather close print upon the two sides of one sheet of foolscap paper. . . .

After the experiment of reprinting the expensive *Register* in a cheap form, Cobbett announced his “intention to continue that mode of proceeding until the *meeting of Parliament*, or perhaps until *the Reform shall have actually taken place*.”³

Now [he said] events are pressing upon us so fast that my *Register*, loaded with more than half its amount in *stamp* and other expenses incidental to the stamp, does not move about *sufficiently swift* to do all the good it might do. I have, therefore, resolved to make it move *swifter*.

¹ *White Hat* (November 13, 1819).

² *Cobbett's Weekly Political Register*, xxxi. No. 17 (October 26, 1816).

³ *Ibid.*, xxxi. No. 20 (November 16, 1816).

Of the *shilling and a halfpenny*, which is the present retail price of the *Register*, a very small portion is left to the Author. . . . Still, as the *Register* was read in *meetings* of people in many towns and one copy was thus made to convey information to scores of persons, I was somewhat satisfied: or at least I thought I was doing all that it was possible for me to do. But I have recently been informed that at *three* public-houses in one country town the landlords have objected to *Meetings for Reading the Register being held at their houses*, for fear they should LOSE THEIR LICENCES. This was what had never struck me. . . .

The moment I heard of that . . . I saw at once that my readers or *hearers* (or at least a great part of them) must either be driven out into the high-roads and waste lands, or that they must be supplied with reading at a *cheap rate*. Two or three journeymen or labourers cannot spare a shilling and a halfpenny a week; but they can spare a halfpenny or three-farthings each, which is what they pay upon a good large quid of tobacco. And besides, the expense of the thing itself thus becomes less than the expense of going to a public-house to hear it read. Then there is time for reflection, and the opportunity of reading over again, and of referring to interesting facts. The *children* will also have an opportunity of reading. The expense of other books will be saved by those who have this resource. The wife can sometimes read if the husband cannot. The women will understand the causes of their starvation and raggedness as well as the men, and will lend their aid in endeavouring to effect the proper remedy. Many a father will thus, I hope, be induced to spend his evenings at home in instructing his children in the history of their misery, and in warming them into acts of patriotism.

Twenty thousand copies of the famous "No. 18" were sold before a fortnight had passed.¹ Forty-four thousand before a month was out—"Let Corruption *rub that out* if she can."² Two hundred thousand by the end of next year.³ Previous letters on Reform were also soon reprinted; and six weeks after the experiment with the open sheets Cobbett discovered that if he paid a trifling pamphlet-tax he could print the cheap *Register* in octavo-form as a pamphlet that could be bound up afterwards."⁴

It was then for the first time that one who was conscious of being a writer with a social message tried to speak to the people instead of speaking for them, to lead them instead of patronising them, and to educate them instead of lecturing their unheeding Government. This marks a revolution in Press history. Cobbett

¹ *Register* No. 20 (November 16, 1816).

² *Ibid.*, No. 22 (November 30, 1816).

³ G. D. H. Cole, *Cobbett*, p. 225.

⁴ *Register* Nos. 20 and 24 (November 16, December 14, 1816).

thought not of the unenfranchised lower orders, to whom the British Constitution gave no power, but of Men and Women. He became a democrat in practice as well as in theory, and from this time forward the printing-press became an engine not only of actual oligarchic Parliamentary Government, but also of the potential democratic State.

But Cobbett and his imitators made subjects disaffected towards their rulers, and it was soon to be found that the question of cheap publications could not be divorced from the question of criminal libel. The test of criminality was the tendency of the publication, and cheap publications had a different tendency from dear publications because they influenced a different circle of readers by reason of their cheapness.

2. "A LITTER OF LIBELLERS," 1817.

Cobbett did not long remain the only popular Reformist writer; nor was Major Cartwright the only organizer.

Sir Francis Burdett and Thomas Cochrane, who were the two Members for Westminster, and Aldermen Wood and Waithman of London, were Reformists of similar views to Cartwright's and of greater popularity. But there were others who looked on King and Church and Parliament with less reverence, and whose aims were less clearly defined.

Henry Hunt, the Orator of Reform, was less guarded in his words and deeds, and the Tricolour and the Cap of Liberty were to be seen when he spoke at Spa Fields on November 15, 1816. Others with whom he was in touch went still farther: they were the "Philanthropists" who, like Thomas Spence, looked for a return to communal ownership of land, and who plotted to obtain power by the use of physical force, since reforms could not be obtained by petitioning. On December 2nd some of these Spenceans addressed a second meeting at Spa Fields, and when the crowd dispersed some of the mob plundered some gunsmiths' shops while on their way to the Tower of London, and on arriving there one of them called on the guard to surrender. Whig and Tory newspapers treated the riot as an incipient revolution; but for a while the Ministry rested on its war-won laurels. On January 28, 1817, however, the Prince Regent rode through a silent

people to the opening of Parliament, and on his return something, no one knows what, was shot through the glass of his carriage windows. Thereupon Green Bags containing papers were laid before both Houses, secret Select Committees reported on them, and, in spite of enormous petitions for reform, four "Gagging Acts" were hurriedly passed, one enacting a temporary suspension of Habeas Corpus, and another temporarily preventing Reformist meetings, debates, and lectures on politics and history. Even Cambridge Union Society was closed. The Spencean leaders were arrested and charged with high treason. Metropolitan gentlemen broke with Orator Hunt. In March a large meeting at Manchester was dispersed by the magistrates, and by nightfall a number of unemployed men, with blankets strapped on their backs like great-coats, had marched to Macclesfield on their way to petition the Regent in person. In June some Yorkshire "delegates" were arrested, and two days later a few malcontents in the hosiery district of East Derbyshire marched on Nottingham armed with pikes, with a framework-knitter as captain, deluded into expecting that "the northern clouds, men from the north, would come down and sweep all before them." Then the bubble burst, and it was shown that one Oliver, who had gone to Yorkshire as a spy, with the knowledge of the Home Office, had taken upon himself to act at Nottingham as an *agent provocateur*. Dr. Watson, the Spencean revolutionary of Spa Fields, was defended by two Tory barristers and acquitted of high treason by a London jury. Every important political trial of 1817 went against the Government, and the Reformist Press of the Metropolis reaped the full advantage of the unpopularity of the Ministry among the jurymen of London.

On March 3, 1817, the Habeas Corpus Act had been suspended in accordance with the Gagging Act. On the twenty-seventh Lord Sidmouth had sent out his *Circular* informing magistrates of the power to imprison any whom they suspected of libel. Next day *Cobbett's Weekly Political Register* appeared. But it was a farewell number, and ten weeks elapsed before another could appear. Cobbett had fled to the United States in fear of the Government and of his creditors. But other and bolder writers remained, the Gog and Magog among whom were Wooler and Hone, each twenty years younger than Cobbett.

Thomas Jonathan Wooler (1786-1853) was not of the opinion that men should run from dangers when those dangers result from an honest endeavour to serve the public.¹ He was a Yorkshireman who had been apprenticed to a printer, and who had come to London to set up a press of his own, and it was he who more than any other stepped into Cobbett's place as "the fogleman of the Radicals" for two years or more, till it could be said of his *Black Dwarf*, as of *Cobbett's Register*, that labourers used to assemble to hear it read, and even that in a northern colliery district it was to be found "in the hat-crown of almost every pitman you meet."² He was interested in law, and had some acquaintance with Bentham, whose *Parliamentary Reform Catechism* he prepared for publication in his popular style. Yet "it is all but certain that Major Cartwright was the pecuniary prop of the periodical,"³ and on one occasion Wooler put the old Major up as a candidate at Westminster in defiance of the Radical caucus.

Every Sunday the *Black Dwarf* gave vent to much grim humour designed to make public men look ridiculous. On his third appearance he stated some obvious facts about the Right of Petitioning, saying that Master Johnny Bull's right to grumble was useless, though undoubted, and that petitions to King John, Charles I, and James II had been successful only when enforced. He was arrested, charged with a libel on those Kings and on the part of the Constitution known as the Right of Petitioning.⁴ Shortly afterwards a second ex-officio information was filed against him for publishing a defamatory libel on the Ministers: they had fought their own battles, though they said they were fighting those of the people, and now the war was over the people saw that they had won no glory, and had conquered themselves and not France. He was tried first on the second and more serious charge; he defended himself, and a verdict of Guilty was entered against him, amid the hissing of the public, before all his jury had returned

¹ *Black Dwarf* (April 2, 1817).

² Castlereagh in *Hansard* (1819), xli. 103; Mackintosh, *ibid.*, 118; Brougham, *ibid.*, 222; Bankes, *ibid.*, 1348. Cobbett's circulation declined.—*Bennet*, *ibid.*, 1356. Wooler's was said to be 12,000 weekly.—H.O., 42. 197 (October 19, 1819). Private letter from someone in a mining district to Lord Eldon, *ibid.* (October 25, 1819).

³ Alexander Bain, *James Mill, a Biography* (1882), p. 435.

⁴ *Black Dwarf* (February 12, May 9, 1817). Also a full report of the *King against Wooler* (1817).

into Court, and before the Judge had heard all the foreman had to say. The jury's verdict was a "Guilty, but—," and next day the *Morning Chronicle* received a signed copy of the statement some of the jurors had intended to add to the verdict: "as truth is declared by the law of the land to be a libel, we three are compelled to find the defendant Guilty." On the other information Wooler secured an acquittal.¹

William Hone (1780–1843) was a far different man.² He was a humorous antiquarian bookseller off Ludgate Hill, and immediately after the outrage on the Prince Regent Francis Place helped him to produce a short-lived twopenny sheet called the *Reformist's Register*, and devoted mainly to a defence of Radical Reform against Brougham and the other Whigs.³ Before the end of the year Hone discontinued this paper, so as to give more time to the business side of the firm.⁴ The business was difficult: he was a Nonconformist, and he had had the bad taste to parody the Anglican Catechism, Litany, and Creed, in laughing at a trinity of Cabinet Ministers; Lord Chancellor Eldon was "Old Bags," Castlereagh was "Derry Down Triangle," and Sidmouth was "the Doctor." But the Attorney-General made the mistake of filing three ex-officio informations for blasphemous libel, scandalizing and bringing into contempt the Church of England as by law established and parts of the Book of Common Prayer. Hone was imprisoned for inability to give bail in £1,000, and his trial was postponed from May to December because of the defects revealed by Wooler in the Special Jury Book. But when at last the trials came on he treated a crowded Court to a recital of unpunished parodies by George Canning and many Church dignitaries and others in authority, in sensible speeches of six, seven, and eight hours, on three consecutive days, and three times he was acquitted by London juries.⁵ Lord Chief Justice Ellenborough, who had

¹ *Morning Chronicle* (June 6, 7, 1817); *Statesman* (June 7, 1817).

² F. W. Hackwood, *William Hone, his Life and Times* (1912), based on MSS. belonging to Hone's daughter. Portrait in National Gallery. Hone was later an employer of Cruikshank and friend of Dickens.

³ February 1, 1817, to October 25, 1817. Graham Wallas, *Life of Francis Place*, p. 124 sq., does not print the title quite correctly.

⁴ It ended with an ode to Wooler, "Freedom's Fieldmarshal." Place had ceased to write for Hone, and Hone was "sick and savage" because Place had not had a report of Wooler's trial published.—Hone to Place, from King's Bench Prison (June 26, 1817), Brit. Mus. Add. MSS. 37949, f. 46.

⁵ Guildhall: December 18, 19, 20, 1817.

struggled from the sick-room to secure Hone's conviction, never again emerged from his retirement to sit on the Bench; Attorney-General Garrow was laughed out of Court, and filed no more informations for libel; Hone published full reports of his trials, and they ran through many editions, while he himself was honoured with a public dinner and presented with three thousand pounds raised by public subscription.¹ Altogether nearly one hundred thousand copies of his parodies were sold.² Never again did an Attorney-General prosecute a witty parody. Hone had discovered a weapon which could not fail to cause ridicule, yet which was safe to use, at least in London, and which he was afterwards to employ again with great success.

Two almost unknown writers had been made famous by ill-advised and unsuccessful Crown prosecutions. Other "dwarfs" besides Wooler's appeared: John Hunt brought out a fourpenny *Yellow Dwarf*, for which Leigh Hunt and William Hazlitt wrote.³ And some loyalist writers produced an equally shortlived *White Dwarf*.⁴ More important was the hope of impunity which Reformists now expected, and which they did, for the next year, enjoy. Equally important to the individuals concerned was the faith which the success of Hone and Wooler gave every shopkeeper in his own ability to defend himself to the satisfaction of the Court, even though he knew next to nothing of law and had never before opened his mouth in public.

There followed nearly a year of delusory tranquillity, due largely to speculation and renewed over-production. A General Election was approaching; "Gagging Acts" were allowed to expire; and in the House of Commons criticism of the Royal Family went the length of reducing the grant to one Royal Duke and rejecting a grant to another. But Parliament voted a million pounds for the building of additional Anglican churches in populous parishes,⁵ and defeated the resolutions moved by Burdett and Cochrane in favour of universal suffrage, the secret ballot, and annual parlia-

¹ The subscribers included Burdett, Cochrane, Bedford, Waithman, Perry, Wooler, Leigh and John Hunt, and "F. P." Perry said that Erskine offered twenty guineas for a *Report*, but would not subscribe publicly.—Brit. Mus. Add. MSS. 36628, f. 24 (Place).

² *Rep.*, ii. 47.

³ January 3 to May 23, 1818.

⁴ November 29, 1817, to February 21, 1818.—*Rep.*, iv. 525.

⁵ 58 Geo. III. c. 45.

ments by one hundred and six votes to none. Then, in the spring of 1818, Parliament was dissolved; and its dissolution gave some hope of the speedy break-up of the unreformed Constitution.

3. "TIMES THAT TRY MEN'S SOULS," 1819.

In the early summer of 1818, when no concession whatever had been made to the demand for radical reform, but when the democratic agitation seemed to have ceased, except in the cheap periodicals, a General Election was held, and the Whig representation was increased. Westminster saw four Reformists, besides a Tory and Romilly, the Whig, fighting for two seats; Burdett was elected as usual; but Cartwright and Hunt, who were not supported by any party organization, had to withdraw before the end of the poll, the Major, who was supported by Wooler, receiving only twenty-three votes in three days, and the Orator only eighty-four in a fortnight.

During this election an eight-page half-sheet, sold for a penny and called *The Gorgon*, made its appearance.¹ It was partly a trade-union publication and partly an exposition of the ideas of the philosophic Radicals of Westminster. It was edited by John Wade, formerly a journeyman wool-sorter.² It published articles by John Cast, the shipwright, and by Francis Place, who knew the tailoring trade at first-hand.³ Before the summer was out it was circulating even among the Manchester strikers.⁴ Place and Bentham helped to finance it.⁵ Its general aim was to confer "the greatest quantity of good on the greatest number of individuals" by obtaining Universal Suffrage "for the whole biped race" in so far as they were "accountable to the laws for their conduct."⁶ Its object was a practicable reform of government as a means of

¹ Later increased to 1½d. so that newsvenders might make as much profit as on *Twopenny Trash*. It was the first penny paper. Commenced May 23, 1818. The last number in Place's annotated volume, now in British Museum Reading Room, is dated April 24, 1819; but there is nothing to show that the work ended then.

² (1788-1875). Later a popular writer on law, economics, history, and geography. His *History of the Middle and Working Classes* (1833) went through three editions in three years.

³ Webb, *History of Trade Unionism* (ed. 1920), p. 85 n.

⁴ H.O., 41. 4, p. 177 (September 18, 1818). Halévy, *Histoire*, ii. 52 n.

⁵ Graham Wallas, *Life of Francis Place*, p. 204.

⁶ July 18, 1818.

securing general happiness; it disliked abstract theories; it refused to confuse the issue with talk of "natural right."¹ Though it attacked the *Black Dwarf* and called "Orator" Hunt "a brazen-faced booby," it attached more importance to the Radical Cause than to any of its factions or leaders.² It attacked scriptural revelation in the light of reason.³ It attacked the Society for the Suppression of Vice as being "composed of shopkeepers who had joined the association to screen themselves from prosecution, and of the adherents of the present system of abuse in Church and State."⁴ It attacked the Whig Parliamentarians and journalists, and especially Grey, who had attributed the mischievous petitioning of starving men to "the seditious Press," and who had recommended ministers "to prosecute cheap publications."⁵ It attacked the expense of the Royal Family, and Cobbett for tolerating it, and "the boobies that sing 'God save the King.'"⁶ In short, the *Gorgon*, true to its name, tried to end Corruption by exposing it, in the spirit of John Wilkes's friend Churchill, whose lines it took as its motto:

Let not, whatever other ills assail,
A damnèd aristocracy prevail.

Before the summer was over there came a renewal of distress and disaffection in the North. There were strikes and demands for the repeal of the Corn-law; but, more widespread, there was an apparently spontaneous movement in favour of radical constitutional reform, with its Union Societies in Lancashire and the Midlands, and its Political Protestants in the North-East. These latter organized themselves, like Methodists, in small "classes," paying a penny a week to an elected "class-leader," whose function was to buy political publications, have interesting extracts read from them, and enforce order and decorum, prohibiting all beer

¹ December 19, 1818, August 22, 1818. Wade considered Paine's works "a jumble of conceits and impracticable dogmas."—*Hist. Mid. Work. Classes* (ed. 1833), p. 473.

² February 27, 1819, on Henry Hunt. "We cared no more about the Burdettites or the Huntites than we did about the Canaanites or the Jebusites."—July 18, 1818. Its independent criticism led to a change of publisher: R. Carlile at first, J. Fairburn from July 25, 1818.

³ April 10, 1819.

⁴ April 24, 1819.

⁵ April 3, 1819.

⁶ January 30, March 6, 1819.

and spirits in the "class-meetings."¹ Moreover, women began to vote at Reform meetings, and special Unions of "Female Reformers" were organized.

Radicals entered on the year 1819 with high hopes of reform, and Cobbett's publisher, Thomas Dolby, who looked on the assembling of a new Parliament as the commencement of a new era in our history, decided to publish its debates in twopenny sheets:²

For persons of enlarged views, with limited pecuniary means, this *Parliamentary Register* is chiefly designed [wrote Dolby in the preface]. Political information having, for some time past, been circulated at a cheap rate among what are called the "lower orders," the said "orders" are now in a fit condition to read, and to decide upon the propriety of what is said and done by their betters.

My own political opinions are no secret amongst a considerable portion of my neighbours; but those opinions shall never be visible in any part of the following pages. Not a sentence nor even a word shall be qualified to serve any purpose, person, or party whatever. I will "nothing extenuate nor set down aught in malice." It must, however, be admitted that Nobles and Right Honourables do not *always* speak to the purpose; and when it so happens that I must either give my readers a whole sheet of verbosity or cut my way through with a pruning-knife, I shall certainly adopt the latter alternative, taking care, however, at the same time to preserve the *argument* (if there should happen to be any in it) *entire*.

There certainly did seem to be some chance of Parliament reforming itself. A Bill to prevent British subjects from serving with the South American revolutionary armies against the Spanish Government, as Cochrane was doing, was passed by only narrow majorities. Grattan's last motion for Catholic Emancipation was defeated by only two votes. A motion in favour of Scotch Burgh Reform was actually carried. But when, on July 1, 1819, Burdett proposed that the House of Commons should seriously consider the state of the representation, early next session, only fifty-eight Members voted with him, against one hundred and fifty-three.

¹ See, e.g., H.O., 42. 197 (October 23, 1819). The publications there recommended included Cartwright's *Bill of Rights*, Bentham's *Reform Catechism*, Ensor's works, *The Black Book*, Cobbett's *Paper against Gold*, and the weeklies published by Cobbett, Wooler, Sherwin, etc.

² Dolby's *Parliamentary Register*, 1819. British Museum has 67 parts of 16 pages each for January to June. But advertisements show that it was again published in the autumn.

This was the signal for renewed agitation, and the long summer days were favourable to it. But the "Radicals," as they were now called in derision, no longer stopped short at petitioning Parliament or Regent. On Monday, July 12th, a monster meeting was held outside Birmingham; it was addressed by Wooler and a local newspaper proprietor among others, and Cartwright was on the platform; it elected Sir Charles Wolseley "legislatorial attorney and representative" for one year, subject to recall, with instruction to present himself at the bar of the House of Commons, and take his seat if allowed to, "a petition in the form of a living man instead of one on parchment or paper," as Cartwright quaintly put it.

The cotton towns and villages around Manchester planned to follow the lead of Birmingham; their meeting for this purpose was cancelled, as the magistrates declared it illegal; but they announced a meeting in St. Peter's Fields for the following Monday, August 16th, "to consider the propriety of adopting the most legal and effectual means of adopting Reform in the Commons House of Parliament." So that they should not look like a disorderly rabble, the men and women had drilled themselves and practised marching in procession; then on the appointed morning they marched into Manchester in their thousands, dressed in their Sunday clothes, with bands playing and flags flying. Henry Hunt, conspicuous in his white "Radical" hat, rose to address the meeting; but the magistrates had issued a warrant for his arrest; the special constables and the gentlemen of the Yeomanry were unable to reach him; so the Hussars charged, and in the confusion that followed eleven persons were killed and over four hundred injured. Whether Ministers approved or disapproved of the measures taken, they did not dare to let their magistrates down; the Regent approved and highly commended the conduct of the authorities; the Home Secretary announced to the magistrates "the great satisfaction derived by His Royal Highness from their prompt, decisive, and efficient measures for the preservation of the public tranquillity"; and the Radicals believed him.¹

By now other papers, inferior to the *Gorgon* in talent and even bolder in style, were beginning to appear. A Smithfield bookseller named Thomas Davison brought out a *Medusa or Penny*

¹ Pellew, *Sidmouth*, iii. 262.

Politician with the motto, "Let's die like men and not be sold like slaves."¹ Its hero was Henry Hunt; its ideals were republicanism, rationalism, and simplicity; methodistical "blackcoats" were the chief victims of its weekly tirades; and it did not hesitate to hold up the mission of Brutus and the example of Felton for imitation.² Similarly, there was another self-styled "harbinger of evil" in the shape of a three-halfpenny *Theological Comet or Free-thinking Englishman*, with the motto: "It is shame to trust our souls in the hands of those we should be afraid to trust with our money. Come, come, venture to think for yourselves."³ Events at Manchester changed its title to the *Theological and Political Comet*, and gave it a new motto: "The cause for which the blood of the people of Manchester hath been *accidentally* shed."⁴

These events gave rise to an outburst of new weekly publications. *The London Alfred or People's Recorder* started with an account of the "Manchester butcheries" and promised copious accounts in future of all public meetings in England.⁵ *The Democratic Recorder and Reformer's Guide*⁶ began with the declaration: "If ever it was the duty of Britons to resort to the use of arms to recover their freedom and hurl vengeance upon the heads of their tyrants it is now." "The bloodhounds of Manchester are now in a fair way, we think, of receiving their due (and devils shall have their due) upon the gallows." It took as its motto a remark in its

¹ February 20, 1819, to January 7, 1820; *Hansard*, xli. 49.

² "With what difference would posterity look [upon] the action of the Patriot who should plunge his dagger into the breast of a detested . . . than the relation of the cursed brutalities committed at Manchester."—November 13, 1819.

³ July 24 to November 13, 1819. At first this half-sheet was "edited by Sir John Falstaff, editor of the first two numbers of the *Medusa*, the *London Weekly Magazine*, etc.; printed and published by Robert Shorter, 49 Wych Street, Strand, and sold by all Free-Thinking booksellers and newsmen, who need not be fearful of vending this publication."

⁴ August 28, 1819.

⁵ Davison's second publication. From Wednesday, August 25, 1819. It sold for 1½d. Not in British Museum, but advertised in *Manchester Observer*, August 28, 1819, and bound volumes still on sale, September 1821.—Advt. in Holbach, *System of Nature*, III.

⁶ From Saturday, October 2, 1819, 8 pp., 4to, 3d., ed. E. Edmonds. From October 18, 4 pp., 1½d., publisher Shorter. Not in British Museum Reading Room, but parts 1 to 4 in *Place Collection of Newspaper Cuttings*, XL. i. 57, 77, 113, 129; 1 and 2 in H.O., 42. 197 (October 22, 1819). Review in *Ed. Rev.*, lxxxiii. 308 (October 1819). Placard announcing No! 1 in British Museum copy of *Cap of Liberty*. Circulation said to have been 6,000.—H.O., 42. 197 (October 19, 1819).

own first issue: "Are the masters of Kings, the creators of Kings, the transporters of Kings, to submit to a vile faction!" It was read at Birmingham and Manchester, and an article headed "*Applauding murderers* the worst of *murderers*" was copied by the cheap press of Boston and Coventry.¹

The Cap of Liberty was the significant title of another twopenny weekly edited by an obscure Deist, who pledged himself in his first part to point out to the People the moment when arms must be instantaneously taken up, or else their liberties as immediately laid down.² To him John and Leigh Hunt were spies, and "Bombastico Egotistico" Cobbett was a mere royalist.³

Very different was the kindly Nonconformity of the twopenny *White Hat* as it summed up the opposition of the "phalanx" of dandy parsons, canters, and venal daily papers to the Freedom of the Press, with the remark "owls and bats never did relish daylight"; and as it looked back to the primitive purity of Christianity and to the Anglo-Saxon Constitution:

No spies were paid, no Special Juries known,
Blest Age! but, ah! how different from our own.⁴

These cheap London weeklies were circulated throughout the Island; but by 1819 provincial presses had begun to cater for the Radicals of their own localities. An early imitation at Liverpool had failed because the authorities insisted on its

¹ H.O., 42. 197 (October 21, 1819). Article of October 11, 1819.

² This was Davison's third weekly.—*Hansard*, xli. 49. September 8, 1819, to January 5, 1820; then increased in size and price and combined with *Medusa*. Place's copy is in the British Museum Reading Room. The editor, John Griffin, was twenty-four years old.—*Cap of Liberty* i. 171. He had some knowledge of medicine, but later sold books and coffee-substitutes at 11 Middle Row, Holborn.—*Republican*, v. No. 1., vi. No. 4., vii. No. 2. *The Cap of Liberty* circulated in Yorkshire—H.O., 42. 199 (November 22, 1819). In it there was a prophecy in the form of a proclamation, "given at our Palace of Corruption this 7th day September," which announced, after mentioning the *Cap of Liberty*, *Medusa*, and *Black Dwarf*: "We would most strenuously advise our subjects to abstain from reading such Jacobinical effusions of Patriotism, Justice, and Political Economy as these vile prints abound with. . . . Our good friend Hone-hater is dead, or the authors of such seditious language would, right or wrong, be browbeat into silence. At our next meeting of Parliament, however, we shall endeavour to pass an Act which will at once abolish the Liberty of the Press, which, indeed, was always as disagreeable to us as it was pleasing and gratifying to the People."—*Cap of Liberty*, i. 8.

³ *Cap of Liberty*, i. 169, 198, 268.

⁴ Saturday, October 16, to December 11, 1819. Publisher: C. Teulon, 67 Whitechapel High Street. Perhaps Unitarian. Especially November 13 and December 4, 1819.

bearing the newspaper stamp.¹ But Boston had its penny *True Briton*, composed mainly of quotations from London weeklies from June 1819.² *Wardle's Manchester Observer* also copied them in dispensing with the newspaper stamp.³

After Peterloo the Black Country shared in the outburst. Birmingham Radicals could buy *Edmond's Weekly Register* for threepence, and read in it how the yeomanry whetted their swords in preparation for a massacre.⁴ *Lewis's Coventry Recorder* was the fourpenny publication of a man who had till recently conducted a school, who had addressed meetings at Stockport and Birmingham, and who was under prosecution at Warwick for seditious practices. It was specially distasteful to the unrepresentative city corporation as it criticized them as strongly as it did the central government.⁵ Dudley, too, had its twopenny *Patriot*, with the motto "God armeth the patriot." "The author of it," said the constable, "has long been known to the police as a very active agent in the formation of Union Societies in this town and neighbourhood."⁶ Finally, in Glasgow, we find Gilbert Macleod, a Unitarian, printing over a thousand copies each week of the threepenny *Spirit of the Union*, as an organ of the sentiments of the Radical Reformers of the West of Scotland, who advocated annual parliaments and universal suffrage.⁷

¹ *The Gleaner* (April 1817), published by Egerton Smith, of the *Liverpool Mercury* (Radical, catering for Catholics). The *Kaleidoscope* (from July 1818) was so purely literary and scientific that its only comment on Peterloo was a story of the Peasants' Revolt.

² Printed and published by J. Jackson, of Bridge Street, from June 9, 1819. Not in British Museum, but numbers 1 to 20 in H.O., 42. 195 (September 27, 1819), 197 (October 20, 1819).

³ Reduced from 7d. to 3½d., July 10, 1819. At British Museum it is bound up with Wroe's *Manchester Observer*, of which Wardle had previously been part-proprietor. Motto: "A genuine patriot acts as if on himself alone rested the fate of the commonwealth."

⁴ From August 28, 1819. Proprietor, G. Edmonds. Not in British Museum, but No. 5 in H.O., 42. 195 (September 30th). Referred to, also, H.O., 41. 4. p. 344; H.O., 41. 5, p. 456; H.O., 42. 199 (November 30th).

⁵ From October 16, 1819. Printed at Birmingham. Proprietor, William Greathead Lewis, apparently the publisher of "cheap editions of Volney's *Ruins of Empire*, his *Researches in Ancient History*, and the works of Helvetius."—*Republican*, v. 278. Not in British Museum, but No. 1 in H.O., 42. 197 (October 19th) and 198 (November 14th).

⁶ From November 6, 1819. Printed and published for J. Wallace by George Walters, of Dudley. Not in British Museum, but in H.O., 42. 198 (November 6th, 13th, 17th) and 199 (November 26th).

⁷ October 30, 1819, to January 8, 1820. I have not seen this paper. But see *Scotsman* (March 18, 1820) and below, p. 120.

There were other cheap weekly publications besides commentaries on passing events. John Wade, safely anonymous, was editing an encyclopædic *Black Book*, published in twopenny sheets or sixpenny fortnightly parts, to explain the continuance of the "Borough System" of government, and the present order of things, according to Utilitarian principles, by the ramifications of corruption and influence.¹ Here were all the facts about places, pensions, and sinecures; the revenues of the clergy and aristocracy; the civil list; public finance; and Members of Parliament. Most striking and most often quoted was his comparison of the expenses of the British Crown and of the republican government of the United States. Over ten thousand copies of each issue were sold.

Such, then, were the cheap publications that were bringing the Government into contempt among the members of Union Societies and Classes of Political Protestants and other working men and women throughout the country. We cannot measure their influence by the smallness of their sales, judged by modern standards; we ought perhaps to multiply such figures as we have by ten, if we are to estimate aright the number of those who came under the spell of an invention which was to that age what broadcasting is to ours.

4. THE RESURRECTION OF THOMAS PAINE.

Thomas Paine had been known for a whole generation as the great ultra-radical and arch-sceptic. So when, at the close of 1819, Cobbett, who was neither a republican nor a Deist, brought Paine's bones home from New York, where they had been buried ten years before, and began to sell locks of the great exile's hair, so as to build a shrine to his memory, the nation laughed. Cobbett agreed only with Paine's criticism of English State finance; but for two years past Paine's greater political and theological works had been playing a more important and less ludicrous part in the practice of the Freedom of the Press.

The revival of Paine's influence was due to Richard Carlile, (1790-1843), who "suffered and achieved more for the Liberty

¹ Publisher (1819): John Fairburn, of Broadway, Ludgate Hill. There is a 6d. part in the original wrapper in H.O., 42. 193 (August 25, 1819). Revised editions published by Effingham Wilson, 1820-23, 1831, 1832, 1833. The *Black Book* is nearly always misdated.

of the Press than any other Englishman of the nineteenth century."¹ Born in 1790 at Ashburton, an old stannary town on the outskirts of Dartmoor and on the main Plymouth road, he received all the education that school-dames and Sunday-schools and an Elizabethan grammar-school could give a poor boy.² Left fatherless, he was sent when he was twelve to a druggist and chemist's shop; but with a vanity that he never lost he soon left it, as he was called on to do many things he imagined to be derogatory to his dignity as a scholar able to read Latin prescriptions. There followed a painful seven years' apprenticeship to tin-plate working, which was one of the leading local manufactures, with a master who knew nothing of "the rights of apprentices." Then, at the age of twenty,

on being relieved from that worse than seven years' imprisonment, I made up my mind to follow the business no longer than I should be compelled: my ambition was to get my living by my pen, as more respectable and less laborious than working fourteen, sixteen, and eighteen hours per day for but a very humble living.³

A few years later Carlile was employed in London as a journeyman tin-plate worker:

I was a regular, active, and industrious man, working early and late, when I could get work enough to do, and when out of the workshop never so happy anywhere as at home with my wife and two children. The alehouse I always detested, both before and after I was married. I had a notion that a man . . . was a fool not to make a right application of every shilling. Many a day I have breakfasted early, gone to the shop with sixpence in my pocket for a dinner, worked hard all day, eaten nothing, and carried home some sixpenny publication to read at night.⁴

¹ G. M. Trevelyan, *British History in the Nineteenth Century*, p. 162. Carlile's portrait is in the National Portrait Gallery. There are three biographies: the first, the best, and the shortest is G. J. Holyoake, *Life and Character of Richard Carlile* (1870): this is based on a close study of Carlile's writings; but Holyoake had met Carlile only a few years before the latter's death. The second is Mrs. Theophila Carlile Campbell, *The Battle of the Press as told in the Life of Richard Carlile* (1899); his youngest daughter hardly remembered him, but she had some of his correspondence and knew some of his friends. The third is G. A. Aldred, *Richard Carlile, Agitator* (1923): a Communist compendium of miscellaneous information, picturing Carlile as a demi-god among demons.

² *Rep.*, ii. 226, x. 89. William Gifford, of the *Anti-Jacobin* and *Quarterly Review*, went to the same grammar-school.

³ *Rep.*, ii. 226. Carlile's vanity was as great as Cobbett's, and he was continually referring to his own past. These paragraphs from his own pen will show his character better than anything an objective observer can write.

⁴ *Ibid.*, vii. 683.

I shared in the general distress of 1816, and it was this that opened my eyes. Having my attention drawn to politics, I began to read everything I could get at upon the subject with avidity, and I soon saw what was the importance of a Free Press. I attended the public meetings, and felt an attachment to [Henry Hunt] as what I thought the best and boldest man, for [he] took care to let no one go before [him]. . . . As well as to read I began to scribble, as I wanted to do something in the great cause as I saw it then. I annoyed the editors of several papers with my effusions. . . .

In 1817 the *Black Dwarf* made its appearance, which happened to be much more to my taste than Mr. Cobbett's *Registers*. Having purchased the first two numbers, and lent them to as many of my fellow-workmen as would read them and got illegibly black, I wrote a letter and enclosed them to George Canning, and requested him, after he had read them, to hand them over to Castlereagh for the Green Bag that was then on the table of the House of Commons, particularly pointing out to him how well they had been read, as was evident from their appearance.¹

Early in 1817 the trade depression brought Carlile's seven-year career as a journeyman metal-worker to an end. When he found himself put on short-time, he borrowed twenty shillings from his employer and invested it in a hundred of Wooler's *Black Dwarfs*.²

Being fired with ardour by the political publications of the day, in the spring of 1817 I resolved to try my fortune at giving them a more extensive circulation in London. I . . . succeeded in placing them into twenty different shops in London and its vicinity that never sold them before. My plan was to carry them to the different shops for sale, as they were scarcely worth fetching, in point of profit, after Mr. Cobbett had gone to America and the Habeas Corpus [was] suspended. My ardour was not to be damped by any danger or difficulty. I persevered, and many a day traversed thirty miles for a profit of eighteen pence.³

Among the publishers whose periodicals he began hawking was W. T. Sherwin, a young man whom the Northamptonshire Justices had removed from the keepership of Southwell Bridewell for avowing himself a disciple of Paine in politics.

Being then under eighteen years of age, and a strong political feeling existing in the country in the winter of 1816-17, Mr. Sherwin came to London and presented a political pamphlet that he had written to Mr. Hone and other publishers, and they were all afraid of it as too strong. The pamphlet was thrown by, and Mr. Sherwin soon perceived that he could do nothing in his political career unless he got a printing-press

¹ *Rep.*, v. 280 sq.

² *Ibid.*, vii. 674.

³ *Ibid.*, ii. 226 sq.

and turned printer and publisher himself. This an ardent mind soon accomplished. He took a portion of an auction-room in Fleet Street, at 183, the windows of which were not wanted for the auctioneer.¹

Here he commenced a sixteen-page threepenny weekly devoted to the support of Orator Hunt, and called by the provocative Painite title of the *Republican*; but no sooner did Lord Sidmouth issue his Circular than Sherwin, like Cobbett, beat a hasty, though more strategic, retreat. After only six weeks the *Republican* became *Sherwin's Weekly Political Register*.² Moreover, Sherwin decided to confine himself to printing, and leave the risks of publishing to someone who did not mind acting as buffer and bearing the brunt of prosecution. So he went to Carlile's work-place and offered him his little shop to use as best he could, on condition that he published the *Register* and paid the rent of £3 a month.³

To this I assented, and in consequence of that I have always filled the gap between Mr. Sherwin and the Government, so that they could not prosecute him without my giving evidence against him.⁴

Just at that time Hone published his political parodies; but on complaint being made against their parodying of Church of England formulas he suppressed them, as he had intended them as political squibs and not as pieces of blasphemy. Carlile bade defiance to the Attorney-General and republished them, and it was on account of this reprint, in which he had no concern either directly or indirectly, that Hone was brought to trial.⁵ Carlile was arrested on three warrants granted by a Judge on the oath of an informer, and committed to King's Bench Prison in default of bail of £800, though he was hardly worth as many pence. There he lay for eighteen weeks awaiting his trial, and then, immediately Hone had been acquitted, he was let out untried and without redress.⁶ "Profits nothing better than journeyman's wages after all expenses were paid throughout that year," ran Carlile's summary of his achievements during 1817. "Came out as poor at the end as at the beginning of that year; but had got a

¹ *Rep.*, ii. 226 sq.

² From April 5, 1817, till Peterloo. The first three half-yearly volumes are in the British Museum, but not the two last volumes. The National Liberal Club set was lost, 1914. The title is misprinted in Halévy, *Histoire*, ii. 29.

³ *Rep.*, v. 268.

⁴ *Ibid.*, ii. 228.

⁵ H.O., 49. 7, p. 8, a letter from Hone (August 9, 1817).

⁶ *Rep.*, i. 14; vi. 293. In prison, August 14 to December 20, 1817.

name of being a good fellow, a bad fellow, a daring fellow, a dangerous fellow, and a Government agent: a fortune is half-made when a name is made."¹

Sherwin's Weekly Political Register was also running a bold course. While Carlile was in prison the Attorney-General filed an information against him for publishing a number which said: "The English Government is such a mixture of tyranny and fraud that it is difficult to discover the properties of its several parts."² During 1817 and 1818 alone it was submitted to the Law-Officers of the Crown on ten occasions.³ But Sherwin and Carlile were not content with original writing: they went farther and reprinted works that had already been condemned by English juries. They halved the size of their *Register* so as to give part of Paine's *Common Sense* with each issue, and then halved its size again so as to include a section of the *Rights of Man* each week.⁴ For disseminating the second part of this latter work Paine had been tried in 1792, although he was away in France, with the future Lord Chancellor Eldon as counsel for the prosecution. Erskine had then pleaded for the defence that Paine's motive was good, however erroneous his opinions, and that he had not intended to injure mankind by provoking anyone to some definite crime. But Paine had sent a letter from Paris, referring disrespectfully to "Mr. Guelph or any of his profligate sons," and the jury found him Guilty, immediately the defence was over, without even waiting for the prosecutor's reply or the Judge's summing-up. Small wonder that Wooler's partner visited Carlile and told him that Wooler and Cartwright feared that the Government would put a stop to all political publications as the result, and also deprecated flying in the face of so ancient and democratic an institution as a jury, even though it had erred.⁵ But Carlile went through with a half-crown edition of the *Right of Man* and a reprint of all Paine's *Political Works* in two volumes for a pound, and the Government did not interfere. The victories of Wooler and Hone thus made possible another step towards the Freedom of the Press.

¹ *Rep.*, vii. 675.

² August 2, 1817.—*Sherwin's Register*, ii. 47, 89, 101. *Rep.*, ii. 228.

³ H.O., 41. and 47 *passim*.

⁴ 8 pp. from September 6, 1817; 4 pp. from October 4, 1817. *Rep.*, viii. 3.

"1818," noted Carlike:

Government evidently sick with the prosecutions of 1817! . . . In this year, in London, the Press was free. The Political Works of Thomas Paine were publicly published and unopposed by the Government, though they had been previously so often prosecuted. This was a great point gained towards the establishment of the new institutions [for the dissemination of knowledge].

But [he continued] a skilful General knows that it will not do to be supine whilst a powerful though beaten enemy is near. If a success be not followed up, it often ends in being a disaster. I was for stopping nowhere, whilst anything remained undone, whilst there was a shadow of an enemy remaining. I continued to advance as far as my supplies would allow, and proposed to besiege the very fortress of Superstition.¹

Supplies, however, were not good. At the end of the year 1818 I am not certain that I was worth a shilling. I owed a few debts and had a few publications in stock as a security for them; but nothing of any consequence, as I took the chief of my publications from Mr. Sherwin, a few copies at a time, as I could sell them. I was not even an independent tradesman in 1818.²

His imprisonment on a charge of blasphemous libel had made Carlike go farther than merely imitating Hone's parodies with a *Bullet Te Deum and Canticle of the Stone*, a *Political Catechism*, and an *Order for the Administration of the Loaves and Fishes*.³ It had made him inquire what that religion really was, which would be endangered if its formulas were used for the purpose of ridicule.³

He had reached his twenty-seventh year without having heard or seen it asserted or insinuated that any religion was ill-founded . . . but having first met with a book called the *Age of Reason* in that year, and reading it as a matter of course, he found the question of the validity of the Christian religion fairly investigated, and felt himself honestly and conscientiously impelled to support the negative side of that question.⁴

The *Age of Reason* was an "investigation of true and fabulous theology," which had first been published in London in 1795. It had then provoked a great literature of "Painiana," including replies from Bishop Watson and Gilbert Wakefield; but it went

¹ *Rep.*, vii. 676.

² I have a copy of the *Bullet Te Deum and Canticle of the Stone* (referring to the missile that broke the Regent's window) which was published by Hone, which suggests that Hone soon forgave Carlike for reprinting the earlier parodies, if he ever really objected.

³ *Rep.*, iii. 267.

⁴ *Ibid.*, x. 92.

through several editions, for one of which Francis Place, then a young man, had been responsible, and one publisher, Thomas Williams, had been prosecuted at the instance of Wilberforce's Proclamation Society, which retained Erskine as counsel, although he dissociated himself from the harsh measures in which that Society indulged. Williams was thus convicted for selling Part Two in 1797; and in 1812 D. I. Eaton was similarly convicted for issuing what he called Part Three, which investigated the Messianic prophecies and the future life.¹ Next year the Unitarian Relief Act was passed, and it was not yet certain what effect it would have.

A republication of the *Age of Reason* was prompted by many motives. It would test the effect of that Relief Act. It would show that past Attorney-Generals and juries could not kill a book for ever. It was a classic, a forbidden classic, that needed no advertising. It was likely to bring matters to a crisis, for it was not so easy for Government to wink at a work which juries had found criminal as at one which came from the press for the first time. Above all, Carlile was prompted to publish it by its intrinsic value as a hard-hitting work which had had a great effect upon him. So he paid Sherwin to print him a thousand copies of each part, and he published the *Theological Works* at half a guinea a volume in December 1818.²

Carlile followed this up with a series of sixpenny weekly reprints called the *Deist or Moral Philosopher*.³ Others, as we have seen, published similar views in the *Medusa* and *Comet* and *Cap of Liberty*. On the one side there followed a flood of tracts against Paine's writings and Paine's character. On the other there appeared two sympathetic *Lives of Paine*, one of them by Sherwin and the other, "to counteract foul slander's lies," by Thomas "Clio" Rickman, at whose house part of the *Rights of Man* had been written, and who was still the centre of a little group of cultured London republicans who kept up Paine's birthday and the Fourth of July with anniversary dinners.

¹ It was easier to convict Eaton of blasphemous libel in 1812 than it had been to convict him of seditious libel in 1793-4. Cf. Veitch, *Genesis of Parliamentary Reform*, p. 271; P. Brown, *French Revolution in English History*, pp. 95, 123-4.

² For his small profits, see *Rep.*, vii. 641.

³ Begun January 1, 1819.

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By January 1819 Carlile had obtained a large shop front in Fleet Street in which to advertise his audacity. Number 55 was in a ruinous condition, with not a lock or a fixture in it, with the staircase falling down, and the front rotten. He had to pay a premium and he had to furnish the shop, though he had hardly any money behind him. But once again his old employer came to his relief, and in the conviction that such humanity and generosity could not be rare, he ran up the shutters on the stage prepared for a great struggle.¹

Richard Carlile had found his life-work.

I saw [he wrote] that the corruptions and delusions of the day required to be attacked with something stronger than squib and pasquinade, which, however it might annoy the subject of attack or amuse the reader, must be confessed to be but ill-adapted to convey principles to the mind. Correct principles require nothing but a clear and forcible statement to have them adopted and admired; and the promulgation of correct principles forms the most powerful opposition to corruption and delusion. Juvenal attacked the vices and corruptions of Rome in satire, but what effect did it produce? None whatever, for some of the objects of attack derived as much amusement from a description of themselves as others to whom the satire had no relation.

The first object necessary to raise man from a degradation is to show him what he ought to be, and elevate his mind with useful knowledge and sound political principles. This Paine saw, and no human being before or since has ever elevated the minds of mankind to so great an extent. No man can rise from reading the writings of Paine without feeling an additional importance, in his character of man, and as a member of society. Paine troubled not about inculcating respect and obedience to existing powers: the first object he taught man was to examine whether those powers were constituted and existing for the welfare of society at large; if not, to set earnestly about reconstituting them, not by any violence, but by temperate discussion and a dissemination of correct principles. To the best of my ability I have endeavoured to tread in the steps of that celebrated character.²

¹ "Here I would observe, with gratitude towards this gentleman who I believe has been far from approving all that I have since done, that if I had not met with a few generous spirits, a few admirable traits of human character, I should look upon the majority of mankind as totally undeserving or unworthy of any individual's sacrifice on their behalf. As a body nothing is more difficult than to direct their attention to the matters of the most momentous concern to themselves. . . . Yet it is a noble employment to lay the foundations of future improvement! Future I do say, for it is very rare that knowledge moves upon any electrical principles, so as to produce present good, or even so as to make the trade of teaching profitable."—*Rep.*, vii. 676 sqq. (1823, when Carlile's disillusionment had begun).

² *Rep.*, iv. 616.

Carlile was a fanatic who had recently been converted to an irrational faith first in the power of print and then in the infallibility of Paine. Yet it was the Press rather than the works of Paine that formed the central object of his devotion :

My whole and sole object, from first to last, from the time of putting off my leather apron to this day, has been a Free Press and Free Discussion. When I first started as a hawker of pamphlets I knew nothing of political principles, I had never read a page of Paine's writings; but I had a complete conviction that there was something wrong somewhere, and that the right application of the printing-press was the remedy.¹

5. THE PRESS PROBLEM AND THE REFORM CRISIS.

Cobbett had been succeeded by Wooler and Hone, and they in their turn had given place to another wave of scribblers and book-sellers, among whom Carlile was the most conspicuous. Together they had used the press in an agitation such as Britain had certainly not seen since Cromwell's death, and perhaps had never seen before.

They stimulated an almost unexampled discontent among the people. They made many of them disaffected towards their rulers. They suggested an intelligible, though not a complete, explanation of their distress; and they suggested a remedy which, in its democratic spirit and in its main outline, was practicable. But it was a remedy that their rulers showed no wish to apply. So men and institutions were brought into hatred and contempt. By no other conceivable means would there have been the least likelihood of altering them.

Write for the poor [wrote Carlile]. How can that be better done than in the exposure of all written errors which oppress them? What is the use of any other writing for the poor than that which will remove those priests and that aristocracy which press them to the earth? ²

Certain sections of the cheap press went farther, and advised resistance to the Government, or revolt against it; they directly and explicitly exhorted Radicals to revolution, and did not simply stop at arousing discontent.

Now to A—MS let each poor man fly!
Let Freedom live AND TYRANTS DIE!
Arch-*Fiends* have Civil War begun:
Death to the wretch that now would run!

¹ *Rep.*, vii. 683.

² *Ibid.*, xi. 746.

So ran a placard announcing a Spencean meeting at Smithfield,¹ and so had the *Cap of Liberty* said, with the one great difference that it always said the time had not quite come, and everyone must be prepared for it in the near future.

The rareness of any instigation to obstruction to this or that act of government is very striking, especially when compared with the frequency of hints at general rebellion. Such interference in detail as there was took two chief forms. The one was instigation to mutiny, and that had to be prevented if Government were to maintain order in the last resort; and its dangerousness was in no way lessened when it advocated disobedience not to His Majesty but to the boroughmongers.² The other form was the advocacy of passive resistance by total abstinence from excisable drinks: Radicals were pledged not to drink beer, tea, or coffee; and peas, beans, and corn were roasted and ground and sold as Radical Breakfast Powder.³ Such a tax is in its nature a voluntary tax, and instigation not to pay it could not possibly be criminal.

One is surprised to find some Radical journals advocating political murders, though even Cobbett had rejoiced at the assassination of Spencer Perceval, the Evangelical Press-prosecutor. It would seem to have been Sherwin who revived the old Calvinist doctrine that killing ruffians who call themselves a Government is not murder;⁴ and Carlile had Colonel Titus's *Killing no Murder* reprinted and sold for four shillings and sixpence.⁵ Instigation to such an offence against any individual, in authority or out, necessarily tends to make some few persons think that an act which is generally reprobated is highly laudable in certain special circumstances. Unlike mere exhortation to revolution, it does not need to be generally accepted if it is to have its effect.

Looking at the wider Reform movement, one sees activities which had to be sternly prevented or severely punished, and about which there could not possibly be any such doubt as hung round the action of the Press. Early in 1820, for instance, some Spenceans attempted to murder the Cabinet—led on, and then informed

¹ H.O., 42. 198 (November 24, 1819).

² E.g. *Sherwin's Register*, vol. v., No. 13 (July 31, 1819) in H.O., 42. 195 (September 28, 1819).

³ See newspapers and weeklies *passim*, end of 1819.

⁴ *Sherwin's Register* (October 24, November 14, 1818).

⁵ Advertisement in *Republican* (August 27, 1819) and *Sherwin's Register* (July 31, 1819). *Sherwin* in H.O., 42. 195 (September 25, 1819).

against, by a plaster-cast maker named Edwards, who had lodged near Carlile, for whom he had modelled a full-length figure of Paine.¹ Similarly, England saw a small insurrection in 1817, and so did Scotland in 1820. Pikes and pistols were seized at various places, and specimens and drawings of them were sent to the Home Office. But for Henry Hunt's instructions, so Carlile said, the crowd would not have marched to Peterloo unarmed.² Civilian populations had defeated standing armies in British North America and in France, and were even then doing so in Spanish America. The age of Victorian Parliamentarism, when the powerlessness of the people against professional armies was generally recognized, had not yet come; nor was there yet any obvious peaceful way of changing the Government or altering the Constitution to the satisfaction of the majority of the people.

In close connection with this standing danger of a resort to physical force one notices among the extremer sections of Radicals too much reliance on the privacy of secret societies and pot-house clubs, in which spying and a suspicious exaggeration of spying naturally flourished, and which justified a certain degree of alarm on the part of the Government. It helped also to promote the mutual distrust that was so marked among Radical leaders, who were nearly all afraid of being duped by each other. On the other hand, a greater use of the Press served to wean the Reform movement from secrecy to publicity.³ It carried the movement into the homes, and it was an attempt to mould general opinion, in the hope that views widely held among the people might some day be acted on by a Government. Such danger to public order as there undoubtedly was lay in the resort to physical force rather than in the publications that advised resistance, which, except perhaps in the cases of assassination and mutiny, might probably have been left alone without any danger. Altogether the Press undoubtedly diminished rather than increased the likelihood of the use of arms, for it opened up another, though a slower, way to ultimate victory; most of those who looked forward to democratic government were convinced that some day, helped by the good

¹ *Rep.*, iii. 6-8; Holyoake, *op. cit.*, pp. 16-18; the figure became James Watson's property. Carlile detested the Spenceans in general and "the spy" in particular.

² *Ibid.*, v. 270.

³ *Ibid.*, ix. 643 sq. (May 21, 1824).

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will of a future king or the interests of one of the aristocratic parties, the opinion of the majority would prevail. A Free Press would be a foretaste of democracy: it would enable the franchised and unenfranchised alike to express their opinions according to their ability, and to criticize the acts of government of which they read. Publicity and the Rule of Opinion are ideas which seem inherent in any ideal of democratic reform; but it was the Press that made them plain and had to fight for the freedom to do so.

For another reason also the Press was not to be feared even when it preached active resistance. A general uprising of the lower orders was made almost impossible by a very remarkable characteristic of the Radical Movement and one which was to have a great effect on the struggle for freedom. That was the violent anti-Methodism and anti-Evangelicalism of almost the whole Radical Press. One may doubt whether the Press was in this respect typical of Radicalism as a whole. Carlyle's testimony was:

The persons who are commonly called Reformers are not the persons from whom I found support in my infidel publications; they were generally people of a different cast, and many of them were high-flown Tories; others did not meddle with politics, but were decidedly hostile to the frauds of religion. I have found many persons come into my shop and say, "I like your theological publications very well, but I hate your politics"; and others, "I hate your theological publications, but I like your politics very well." I can safely say that I have but rarely found the individual that would express his approbation of my conduct generally.¹

Whatever the religious opinions of the mass of the Radicals, it is notorious that Cobbett was the only Anglican among their writers, and that he and all the rest of those writers were without exception decidedly anti-Evangelical.

This antagonism was not without its reasons, as Anglican and Wesleyan Sunday schools even sent home all children who showed their politics by wearing "white or drab hats, and other badges or appendages."² "Were it not for the speeches of Reformers, men who have no work would go on moving their shuttles and ploughs just as if they had," was the sort of absurdity that could be put into a Methodist preacher's mouth by a Radical.³ The

¹ *Rep.*, ii. 400.

² Handbill in H.O., 42. 198 (November 11, 1819).

³ *Dialogue between a Methodist Preacher and a Reformer*, 1819, Newcastle.

Methodists had, no doubt, changed since Wesley's death; they had grown more sectarian and less tolerant in spirit; their itinerant preachers had settled down; their acquisition of church buildings gave them a pecuniary interest in supporting the Government, on whose good will the continuance of toleration depended; and the Wesleyan Connection had fallen under the control of a junta of Tory ministers. But, even apart from these recent developments, they were fundamentally different from the "rational dissenters" of the previous century.¹ They began each new year with a renewal of a Covenant which is one of the nearest approaches in history to the idea of a binding social contract between men and God, and they declared themselves content that God had appointed each Methodist his station and condition, be it high or low. Just before Peterloo the annual Wesleyan Conference proclaimed the duty of passive obedience in an address to the Methodist Societies in their connection:—

As many of you to whom this measure of national suffering has been appointed reside in places where attempts are making by "unreasonable and wicked men" to render the privations of the poor the instruments of their own designs against the peace and government of our beloved country, we are affectionately anxious to guard all of you against being led astray from your civil and religious duties by their disloyal artifices. . . .

Remember that you belong to a Religious Society which has from the beginning explicitly recognized as high and essential parts of Christian duty to "Fear God and honour the King; to submit to magistrates for conscience' sake; and *not to speak evil of dignities.*"

You are surrounded with persons to whom these duties are the object of contempt and ridicule: show your regard for them because they are the doctrines of your Saviour.

Abhor those publications in which they are assailed along with every other doctrine of your holy religion: and judge of the spirit and objects of those who would deceive you into political parties and associations by the vice of their lives and the infidel malignity of their words and writings. "Who can bring a clean thing out of an unclean?"²

¹ "Methodism is as far removed from democracy . . . as it is from sin." "It is dissent, and yet it is an enemy to the principles of dissent."—J. R. Beard, *Unitarian, Rise, Progress and Present Influence* . . . (1831).

² Address signed by the President of Conference and by Jabez Bunting, the Secretary, at Bristol (August 7, 1819), *Minutes of Methodist Conferences*, v. 63. See, similarly, the Address to the King from the Conference at Liverpool (July 26, 1820) and *Animadversions on the Address of the Wesleyan Methodist Conference, in a Letter to Jabez Bunting, by a well-wisher to Methodism.* (Liverpool, 1820).

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This was followed up by an address to the members of all the Wesleyan Methodist societies from the Committee of Conference for safeguarding their Religious Privileges, which recommended that all

who shall be found to persist, after due admonition, in identifying themselves with the factious and disloyal, either in the public meetings or private associations . . . shall be forthwith expelled from the Society.

It also resolved

that in the judgment of this Committee it is, under existing circumstances, an important part of the Christian duty of Methodist Societies to unite with their fellow-subjects in every proper and lawful demonstration of attachment to our Free Constitution and of Loyalty to our venerable Sovereign, in upholding, by every means in their power, the Authority of the Laws by which we are governed; and in *discountenancing and repressing all infidel and blasphemous publications* as well as all tumultuous, inflammatory, or seditious proceedings.¹

One even finds articles in provincial papers "on the advantages of bad times" because they are the dispensations of the Almighty,² and poems on the Devil and the Radicals, inserted in all seriousness.

From his brimstone bed at the break of day
A-mobbing the Devil is gone
To visit his Radical Friends in Town
And see how Reform goes on. . . .
He saw Carlile by his blasphemous pile
Man's laws and God's laws defying;
Said Satan, "I see, they have no need for me
While such friends with my oars are plying."³

If ever Methodism and Evangelicalism did prevent a French Revolution in Britain it was in 1819. It did at least prevent the Radical movement from being an uprising of the "lower orders" by splitting the unenfranchised into loyalists on the one side and disaffected Radicals on the other. It made the struggle one of ideas rather than classes. It made itself an obstacle in the way of emancipation, and it had to be defeated before the Press could be free.

¹ City Road Chapel, London, November 12, 1819. The italics are mine. The secretary of the Committee was Blanchard, who kept the Methodist Bookshop. *Methodist Magazine* (December, 1819), p. 943; *Manchester Observer* (December 11, 1819, January 1, 1820), *Manchester Patriot*.

² *Manchester Patriot* (August 28, 1819), reprinting from *Sheffield Iris*, then edited by James Montgomery.

³ *Ibid.* (December 1819).

It made religion a field for political struggle in the nineteenth century as it had been two hundred years before.

It was generally assumed that the whole Radical movement, including the Press, was a power which the Government had to give way to or crush. It seemed that ministers had radically to reform the Constitution, or else enforce the Libel Law, if they did not wish for religious and political revolution. They could not look at the Press Problem calmly, for their lifelong experience had been of paternalism in matters of opinion, and the freedom of 1818 was nothing but a lull in the middle of the brooding storm that was to break out again in 1819.

The question was being discussed in the country.

"What a strange reasoner. Now, you have got these dangerous notions by reading the *Twopenny Trash*! I wonder that Government should suffer those seditious libels to circulate," was what Methodist preachers were saying. And Political Protestants were retorting:

"That is, you wonder the ministers are no more foolish, violent, and wicked than they are. The *Twopenny Trash*! And pray, is there no Sixpenny Trash? Cannot truth and reason and sound argument be sold for twopence? And if books become dangerous when they are cheap, how are we to defend our Cheap Religious Tract Societies? Now, if Cobbett, Wooler, Sherwin, and other popular writers of Political Tracts, promulgate false doctrines, the Press is open, refute them. If they publish mis-statements, overwhelm them by the production of irresistible facts. If their laughing be low and vulgar, expose them in a style more chaste and eloquent. Defeat them upon their own ground. But do not run in an affected fright to a Police Office (as I see some of our Preachers have done at Manchester) and join associations for the purpose of arguing with swords and batons. Your God-fearing friends, the Yeomanry, have indeed sabred the people; but they have not thereby convinced them of error."¹

¹ *Dialogue between a Methodist Preacher and a Reformer* (Newcastle, 1819). 2d.

CHAPTER THREE

THE STRUGGLE IN THE COUNTRY, 1819

1. RICHARD CARLILE'S CONVICTION.
2. THE PROSECUTION OF THE LONDON NEWSVENDERS.
3. PROVINCIAL PRESS-PROSECUTIONS.
4. "WESTMINSTER'S PRIDE AND ENGLAND'S GLORY."
5. TRANSPORTATION FOR LIBEL.
6. A "MOCK TRIAL."

1. RICHARD CARLILE'S CONVICTION, 1819.

WOOLER and Hone had won their victories over the Attorney-General when he had put them on the defensive. Carlile adopted a bolder attitude and himself took up the offensive when he published Paine's *Age of Reason*, which had twice before been condemned by juries, and well placarded the walls of the Metropolis with notice of the fact on December 16, 1818. At first "the sale of the work went on very slow, and the publisher had begun to fear that it would not be prosecuted as a month elapsed without hearing of anything of the kind."¹ But exactly a month later, when he had scarcely got a counter in the new shop, the Society for the Suppression of Vice presented a bill to the Grand Jury then sitting at Old Bailey, "and the most important of all wars began."² A true bill was found; so Carlile presented bail at once and avoided arrest. The Sunday newspapers reported the indictment, the sale of the first thousand was speeded up, and a second edition, this time of three thousand, was printed. Meanwhile a messenger from the Treasury Solicitor had bought three copies, and Lord Sidmouth had given instructions for a State prosecution.³ On the first day of Hilary Term, Sir Samuel Shepherd, the Attorney-General, filed his information against the same work,

¹ R. Carlile, *Mock Trial* (1822), preface p. iii.

² *Rep.*, vii. 676.

³ Purchase made December 17, 1818. Carlile sent his compliments to the Treasury Solicitor, adding: "If he would allow him to eat his Christmas dinner at home he would be prepared to meet him." Instructions in H.O., 41. 4, pp. 224, 235 (December 23, 1818; January 9, 1819).

and further bail was required. Carlile was called on to plead, and imparled on both prosecutions till Easter term.¹ But before then the secretary and solicitor of the Vice Society unexpectedly went with his clerk to the Chief Justice, swore that the sale of Paine's *Theological Works* was continuing, and obtained a warrant, which was enforced by a tipstaff at eight o'clock one February evening.² Two hours later Carlile was in Newgate, the common gaol of the City of London, and there he passed the night without a bed. The fourth day after his arrest he was brought to another Judge's chambers and released on common bail, the third bail that had been tendered and taken to answer charges against one single publication.³

On the first day of Easter term⁴ he pleaded not guilty to the information and the indictments, but he found a new indictment at the instance of the Vice Society against the publication of the first volume of the *Deist*, which contained the *Principles of Nature*, a work written in America by a blind Deist who had once been a Christian minister.⁵ There was also a fifth charge, in another ex-officio information, for selling a number of *Sherwin's Register*.⁶ "Why not proceed against the author?" asked Sherwin. "Sir Samuel Shepherd well knows where the author is to be found at any time, and that he is ready to defend whatever he may have written. . . . Mr. Carlile is only one amongst a number of persons who retail the *Register*; why, then, select him in preference to any other?"⁷

When Trinity Term came Carlile had to plead Not Guilty to the new charges, though he declared that prosecutions were being multiplied for the purpose of embarrassing his defence. But still there were no signs that he would ever be brought to trial.⁸ Four informations filed in 1817 were still outstanding.

Carlile did all in his power to make sure of a trial by publishing almost every relevant document. Copies of the first ex-officio

¹ January 23, 1819.

² February 11, 1819.

³ February 15, 1819.

⁴ April 28, 1819.

⁵ This essay by Elihu Palmer was also considered by the Home Office. H.O., 41. 4. 279 (May 1, 1819). Thomas Cooper told how it was sold cheap by a travelling bookseller.—*Autobiography*, ch. v.

⁶ Vol. iv, No. 6 (December 1818). Not in the British Museum.

⁷ *Sherwin's Register*, vol. v. No. 8 (June 26, 1819).

⁸ There are full accounts of the prosecutions in *Rep.*, i. 14, and in the 1822 preface to his *Mock Trial*.

information filed and the first indictment found against him, both of which contained all the objectionable passages in Paine's *Age of Reason*; copies of Chief Justice Abbott's warrant for his arrest and of Mr. Justice Holroyd's warrant for his committal; and lists of jurors nominated to try the five charges: all these were published cheaply.¹ "The motive," he said, "by which the publisher of the *Age of Reason* is induced to lay before the public a copy of the Bill of Indictment is the glaring absurdity and falsehood with which this precious document is replete. The distinguished boobies who take the lead in the Society for the Suppression (or rather encouragement) of Vice, amongst whom are the bench of bishops, and saintly Sidmouth, and the pious Wilberforce . . . charge an endeavour to convey a sublime notion of the Supreme Being as incurring His high displeasure; as if they knew what pleased or displeased that incomprehensible Being, in the same manner as those earthly Princes to whom they are accustomed to pay their adulation."

Then he pointed out a detail that was certainly remarkable: "An ex-officio information has also been filed . . . in which the same extracts are made (*verbatim et literatim*) as in the indictment, with the addition of a repetition of counts (twelve in number) which I imagine is considered necessary to give the information an air of importance. *Query*: Could this have been done without the prosecuting parties acting in concert? Or will they pretend to the same divine direction which the Septuagint boasted of, each of which, being kept separate, produced the same (*verbatim et literatim*) translation of the book called the Bible?"

While in Newgate he wrote an open *Letter to the Society for the Suppression of Vice* "on their malignant efforts to prevent a free inquiry after truth and reason." "Nothing," he boasted, "but a fair exposition of both our views shall induce me to compromise this important question: rendered the more important because a sycophantic and hypocritical society—a refined *banditti*—attempts to crush it in its bud." "By every exertion and inquiry that I could make I have not been able to obtain a list of your names, and am given to understand that no such thing has been published

¹ In the *List of Jurors*: "Note: on nominating a certain gentleman in the preceding lists, Mr. Pritchard [Secretary and Solicitor to the Society] objected to him as a person 'loose in his opinions of those things.'—R. CARLILE."

for many years past." "Have you no priests in your Society? Why do you not set them to write a volume of the same size to refute the argument and assertions of Paine? I will pledge myself to sell it with the other." "Hear, ye promoters of theological dissensions and trouble, whilst I tell you that you possess the same disposition as your ancestors who kindled the flames in Smithfield." At the same time he also wrote an open *Letter to Sir Samuel Shepherd*, the Attorney-General, in which he cleverly anticipated the arguments for the prosecution, and proceeded to dissect them clause by clause.

Richard Carlile was by no means the only man who was thinking of the trial that might come. Francis Place, whom he hardly knew at that time, sent him word "that a gentleman at the Bar, a friend of Mr. Bentham's, had offered to undertake his defence . . . from a conviction of the merits of Paine's *Age of Reason*." But Carlile respectfully declined that generous offer, as he was bent on meeting the Attorney-General personally, and as he had asked "all persons who may feel interested in the issue of this (I may say) important event to furnish me with any materials or ideas they may possess, calculated to make an impression on the minds of the jury, and in due time to collect, condense, and arrange them according to my own judgment, so that during my defence I may refer to them without hesitation, confusion, or embarrassment."¹

The Examiner defended his conduct, and raised him still higher in his own estimation. He promised Leigh Hunt that the final establishment of "the Liberty of the Press without danger of imprisonment or other penalty" should ever be his aim and study.²

Wooler pointed out that the Vice Society showed that it had more money than sense in combining with the Attorney-General to give a more rapid and more extensive publicity to Deistical writings, while "prisons terrify only the timid."³

A Radical Reform meeting on the moor outside Leeds voted "its unqualified praise to Mr. Carlile for his undaunted courage

¹ Brit. Mus. Add. MSS. 37949, f. 241 (Place Papers), Carlile to Place (January 28, 1819).

² *Ibid.*, 38523, f. 48 (Hunt Papers), Carlile to Leigh Hunt (May 31, 1819).

³ *Black Dwarf*, iii. 221 (April 4, 1819). To a journalist it was obvious that Attorney-Generals and prosecuting societies were helping their enemies by advertising them.

in supporting the Liberty of the Press in defiance of bigots and despots."¹

At Westminster the British Forum, rendered famous by the Free Speech and Free Press Riots of 1810, debated for three weeks whether the prosecution of Carlile for publishing the *Age of Reason* ought to be "approved as necessary to prevent the further increase of infidelity, and vindicate the doctrines of Christianity?—or censured as an officious and ill-timed interference on a subject not cognizable before any human tribunal, and an infringement upon the Freedom of Opinion that ought to be exercised upon all topics essential to the welfare and happiness of mankind?"²

In the summer they debated the same subject again: "Ought the conduct of Mr. Carlile, the bookseller (in continuing to publish Paine's *Age of Reason* and other Deistical works, notwithstanding the numerous prosecutions instituted against him), to be censured as a serious aggravation of his offence and an obstinate defiance of the established religion of his country?—or approved as a striking instance of the rectitude of his intentions, and of his bold and manly perseverance in the cause of reason and truth?" This time the debate had to be specially transferred to the large hall of the Crown and Anchor Tavern in the Strand.³ There can be no doubt that the prosecution had excited extraordinary interest among "the friends and advocates of free and rational discussion," and many who would never have themselves provoked such a storm were willing enough to support Carlile.

Until the massacre of Peterloo, however, it was not certain that he would be brought to trial. The Society for the Suppression of Vice had probably intended the indictments simply as threats; but Carlile himself brought matters to a crisis. A year before, he and Sherwin had run Henry Hunt as Radical candidate for Westminster,⁴ and he had designed and paid for a flag with "Universal Suffrage" on one side, "Hunt and Liberty" on the reverse and on the border, and a Cap of Liberty on top.⁵ A

¹ Monday evening June 14, 1819. *Ibid.*, iii. 405.

² March 11, 18, 27, 1819. Report published in a pamphlet.

³ June 25, 1819. Report published in pamphlet; window-bill in British Museum.

⁴ "That very foolish set out . . . the only political move of mine that ever I regretted or felt ashamed of."—*Rep.*, v. 277 (1821).

⁵ *Rep.*, v. 262, 277–88.

Manchester newspaper proprietor named Wroe had visited him, seen that flag in the shop, expressed a wish for it, and been given it. This led to an invitation to the Manchester Meeting, at which that flag figured prominently, and he was present there in Hunt's company on the eve of the meeting, and then on the platform with the leading men and women until the moment of Hunt's arrest.¹ He then managed to slip down between the carts and make his way eventually to the hiding-place of Wroe, by whose advice he hurried home by the first mail so as to secure the early publication in Town of what he had just seen.² Before that week was over, and before the magistrates had received the congratulations of the Government, the weekly placard of *Sherwin's Register* announced:

Horrid massacres at Manchester.—A letter from Mr. Carlile (who was on the hustings at the Manchester meeting) to Lord Sidmouth on the conduct of the magisterial and yeomanry assassins at Manchester on Monday last.—A call upon his Lordship to bring these murderers to the bar of public justice.—Case of a poor woman whose infant was drenched in its mother's blood!—Description of the meeting.—The attack, and the conduct of the People.—If the executive power denies justice to the inhabitants of Manchester, the People have but one resource left: the duty of the People will then be to go armed to public meetings.³

That was not all. He superseded Sherwin as editor of the twopenny weekly he published, and changed its title to the *Republican*, as he advocated "the only rational system of Government, namely, the Republican."⁴

The Struggle for the Freedom of the Press became merely part of wider struggle for a democratic republic, and Carlile was as clean a fighter as he was bold.

As the honest avowal of sentiment is becoming more dangerous to the Englishman, and the advocates of a full, fair, and equal representation must inevitably be subject to frequent arrests and imprisonments whilst the present deficient representation exists, the Editor humbly stands

¹ Joseph Johnson, *Letter to H. Hunt* (Manchester, 1822), p. 11.

² *Rep.*, v. 270-74.

³ *Sherwin's Register*, vol. v., No. 16, not in British Museum. Placard in H.O., 42. 193 (August 23, 1819). Article reprinted in T. C. Campbell, *op. cit.*, pp. 307-15.

⁴ Sherwin had got married, and was therefore little inclined to run into danger.—Aldred, *op. cit.*, p. 67, quoting Carlile, but not indicating his source.

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forward to fill the post of danger, ambitious of incurring (if martyrs must be found) even *martyrdom* in the cause of liberty.

The unrepresented and consequently the injured part of the community must rouse and bring into action their strength, to bring about that which must finally be enforced.

In the words of our famous countryman, our great and only prototype, Thomas Paine, we might say, *These are the times that try men's souls*. The Editor, impressed with the importance of the moment, has resolved that no correspondence or essays be admitted into the pages of the *Republican* unless accompanied with the real name and address of the author.

And he offered to record the acts of political persecutors if signed by the sufferer, or his nearest relative if he were dead, "as the hour of retribution is at hand."

Immediately the account of the Manchester Massacre appeared the Lord Mayor issued a warrant against Carlile, by desire of Lord Sidmouth, the Home Secretary, for publishing a seditious libel.¹ On Saturday he was lodged in Giltspur Street Compter.² It was not till he rose from his straw bed on Monday morning that the Lord Mayor asked him to propose bail, and then the "expectant baronet" wanted twenty-four hours to consider it. By Tuesday he decided not to accept Wooler as bail, and wanted forty-eight hours' notice before he could accept a substitute.³ He filled the interval with a very regretful letter to Lord Sidmouth, ending:

Now, as the bail he has proposed will, I consider, be unexceptionable, I beg the favour of your Lordship in the course of this day to inform me whether I shall take his bail, or it be your Lordship's intention to proceed against him for treason. The Recorder and Common Serjeant are of opinion that the publication is treasonable.⁴

Lord Sidmouth, unlike the Lord Mayor, had no desire to refuse the bail proposed, and next week he gave instructions for a tenth prosecution for libel to be commenced against the one individual.⁵

¹ *Gentleman's Magazine*, lxxxix. 175.

² In prison, August 21-26, 1819.

³ This was in spite of the fact that Wooler had a "cottage" at Croydon Common, besides three printing and publishing offices.—Parish Rate-books in Croydon Public Reference Library.

⁴ H.O., 42. 193 (August 25, 1819); John Atkins to Lord Sidmouth. Cf. *Rep.*, i. 19, 21. Carlile was very well informed about City politics and administration.

⁵ H.O., 41. 4, p. 549 (August 31, 1819).

The Cabinet had decided in favour of prosecutions for seditious libels, words, and conspiracy, and against the prosecutions for high treason favoured by Eldon and Sidmouth and the Lord Mayor.

Carlile probably saw the truth when he wrote:

I am inclined to believe that, prior to the 16th of August, my prosecution was in some measure abandoned. Having been present at the Manchester Meeting, and narrowly escaped the sabres of the Yeomanry, and got better through the truncheons of Nadin's gang than some of the attendants of that Meeting, and, lastly, eluded the vigilance and search of the magistrates of that lawless town, I came to London and told the plain and unvarnished tale of the massacre committed by the Yeomanry at the instigation of the magistrates. The necessity of getting rid of me was immediately resolved on, that I might not in any instance give evidence on that subject. First, the project of bringing a charge of high treason against me was discussed, and as soon abandoned, and the trial for the high-sounding charge of blasphemy resolved on, for the double purpose of getting rid of me as evidence and of drawing the public attention from the Manchester affair.¹

Considering the state of London opinion at that time, there can be no doubt that blasphemous libel was the charge most likely to obtain a conviction, and that high treason was the least likely to do so. Besides, there was a new and as yet undefeated Attorney-General and aspirant to the Woolsack, Sir Robert Gifford, awaiting an opportunity of serving the Government. So it became evident that Carlile was to be tried on the first information, and as many other charges as possible, at the first opportunity.

Carlile prepared for an onslaught on Christianity that was to surpass even Robert Owen's declaration against all religions two years before. He subpœnaed the Archbishop of Canterbury, the Astronomer Royal, the Chief Rabbi, "and some of the leading men in different sects of Christians who cavil most about doctrines and tenets." He also subpœnaed Owen, and told him that the trial was not likely to terminate within ten days; but Owen characteristically excused himself with the plea that "he could not at present leave New Lanark without causing an essential injury to the great object on which he was engaged, on which the existence and well-being of millions depended."²

¹ *Rep.*, ii. 2.

² R. Carlile, *Mock Trial*, 1822, preface xvi-xviii.

As the time for the trials drew nearer they loomed still larger in Carlile's imagination.

At a moment when Despotism displays its naked, hideous front, and finds the uniform and unqualified support of nearly the whole clerical world, which has been always found to be one of its last props, a verdict of Not Guilty on these important questions will strike it to the ground with the force of an electric fluid, and like a violent whirlwind tear it up root and branch. . . . The future preservation of this country from all the miseries and curses that can happen to its inhabitants is delegated to twelve persons, and pendent on the monosyllable *Not*. . . . A verdict of *Guilty* will be hailed by the Ministry as a cloak and sanction for all their late actions. . . . A verdict of *Not Guilty* will stagger and shake them from their holds, will destroy the remains of ignorance and superstition, and establish the Liberty of the Press and Free Discussion with all its general influence, will give life to the literary and philosophic [i.e. scientific] world which alone can perfect society, will reanimate the drooping virtues and morality of the country with more than usual health and vigour, will most probably produce that change in the present corrupt system of Government which otherwise will not be effected without all the horrors of an appeal to force.

The great importance of a trial, which was eagerly awaited all over the country, cannot be doubted, especially as it set the tone for the great persecution of Radicalism that followed.¹ But Carlile did not live up to his own expectations or the hopes of others.

On October 12, 1819, Carlile's trial on the ex-officio information for republishing Paine's *Age of Reason* began at the Guildhall. Crowds had assembled two hours before the time for opening the doors, many were left outside throughout the trial, and the sheriffs had brought up some hundred constables and marshalsmen in case they should be needed.² The Archbishop of Canterbury was present in his canonicals, sometimes sitting beside the Chief Justice, sometimes waiting in the parlour behind the Bench. Henry Hunt placed himself in the same coach as Carlile, and accompanied him to the Court, regardless of the

¹ At first sight it seems remarkable that Harriet Martineau's *History of the Thirty Years' Peace* omits an event which seemed so important in 1819 and now. But the First Book was written by John Knight; and it formed part of a series inspired by Brougham's Society for the Diffusion of Useful Knowledge, the outlook of which was strictly utilitarian and secularist.

² H. Crabb Robinson was among the audience. He was struck by Carlile's powers of physical endurance; but was as unable to sympathize with him as were most cultured persons who moved in fashionable circles.—*Letters and Reminiscences* (ed. 1872), i. 334 sq.

unpopularity he might thus bring down on the defendant.¹ Carlile was always a poor speaker, and this time he went into Court specially ill-prepared.² Before the jury was sworn he rashly submitted that the Court was not competent to try the charge against him, as there was no law which applied to the case; Chief Justice Abbott "readily offered to hear from me any argument to that effect; but the fact was that I was then incapable of extempore argument upon the subject, and was not precisely prepared with the necessary written argument. I went into Court careless about everything beyond the determination to read Paine's book to the Jury."³ He replied in detail to several points made by the Attorney-General, and showed that a half-guinea book could not reach the poor; then he handed the jury twelve copies of the book, and read a great many passages from it so as to show its true character. As the candles were about to be lighted he withdrew in a state of exhaustion for refreshment; and twelve hours after the proceedings began he asked and was granted indulgence to resume his defence next morning. The jury were permitted to separate. Next day special arrangements had to be made for coping with a crowd. Carlile then tried to read the Bible and comment on it, just as he had done the *Age of Reason* the day before, so as to contrast the two; but Judges and Attorney-General and jury all combined to prevent him from criticizing the Scriptures and discussing their authenticity and origin.⁴ So he told them he was crushed, and there was a concert against him because he was in a humble station of life, unlike Gibbon and Hume who drew Government pensions. Carlile's defence was deranged, and at the close of the second day some "friends of the Liberty of the Press" asked Hone, who had been present as an auditor, and "two literary gentlemen," to intervene and point out "those authors who had written the most ably in defence of toleration and unrestricted Freedom of Opinion on religious subjects, and to mark the passages."⁵ This was done, and on the third day Carlile read

¹ *Rep.*, v. 461, replying to H. Hunt, *Memoirs*, No. 30.

² G. J. Holyoake, *op. cit.*, p. 13; W. T. Haley, in *Bull Dog*, p. 51.

³ *Rep.*, viii. 545.

⁴ "We have not copied the extracts from the works quoted by Mr. Carlile; the Att. Gen., if we understood him rightly, threatened to prosecute any person who should publish them even in the way of a report."—*Statesman* (evening), October 13, 1819.

⁵ Letter from W. Hone in *Morning Chronicle*, October 15, 1819.

copious extracts from many of these works. But he attacked the lawyers:

The absurdity [he said] of persecuting opinions had become manifest to almost all classes from the astonishing improvement in the general intellect; lawyers, particularly Crown lawyers, were the last to share in the effects of such an improvement; the March of Mind, when once in motion, was gigantic; lawyers remained like milestones upon an old road, while the mass of mankind were making incredible progress in knowledge.

And again, even more rhetorically:

The spirit of persecution, which stalked like a spectre through the sepulchral gloom of the cloister, was now only to be found beneath the legal lumber of the Crown Office, whence it was occasionally dragged forth and clothed in silk, and was to be seen looking askint at the justice-seat through the parchment-roll of an *ex-officio* information.

Then on the strength of some anonymous letters he told the jury they were predetermined against him, and that one of them had said publicly the previous night that he should like to give that rascal Carlile five years' imprisonment on bread and water. Finally, the Chief Justice refused to have "half the City of London" called to show the different beliefs that passed as Christianity among the various sectaries. Altogether Carlile did not make a good impression; while even Radical papers had to admit that Chief Justice Abbott preserved as mild and forbearing a manner as was consistent with his refusal to have the Bible read in order to substantiate Paine's assertions.¹ In his final address to the jury the Chief Justice turned the issue away from religious opinion to questions of fact and law: they had to decide whether the work tended to deprive men of the advantages of Christianity, as a temporary supersession of that religion and a loosing of the bonds of society was quite conceivable, though its complete extinction was impossible; they ought, on their consciences, to pronounce Carlile guilty, if he published this work with the intention of bringing the Christian religion and scriptures into

¹ *Scotsman* (Editor: M'Culloch), October 23, 1819. *White Hat*, October 23, 1819. "I have often doubted whether I did not in that case permit too much to be done; but I thought then that it was better to err on the side of forbearance."—Abbott (February 8, 1821), in *K. v. Davison*, in *State Trials* (N.S.), i. 1367.

disbelief and contempt.¹ Richard Carlile was found guilty for the first time.

On the fourth day his second trial began, on an indictment preferred by the Society, for publishing Palmer's *Principles of Nature*, and he was found Guilty a second time.

The fifth day, a third case was to come on—the information for publishing a seditious libel in *Sherwin's Register*; but the Attorney-General and the Chief Justice agreed to postpone it, as Carlile said he was taken by surprise. It was never called on again.

Judges and lawyers expounded the law because it was the law, and perhaps also because they believed that it was the Christianity of the lower orders that kept society together. Most of them shared in the prevalent rationalism of the educated classes. Sir Robert Gifford, the Attorney-General, was an Exeter man, a member of a family of wholesale merchants with whom Carlile's mother dealt, and Carlile knew that he was a Unitarian.² John Gurney, who was retained by the Society for the Suppression of Vice in the second trial, came of a famous Nonconformist family; he had previously defended Eaton, one of Carlile's predecessors in the publication of Paine, and he was to die a Unitarian.³ Sir Charles Abbott's tutor was said to have appeared in Court and to have volunteered the evidence that the Chief Justice was a Deist⁴; in his summing up he showed some tendency to pass lightly over the crime of impugning Christianity, and to stress

¹ Gurney's shorthand report of the summing up, in *State Trials* (N.S., 1888), i. 1387 sqq. The newspaper reports suggest that Abbott distinguished inquiry and discussion from calumny and scoffing.

² *Rep.* (October 29, 1819).

³ John Gurney (1768–1845), Baron of the Exchequer, 1832. His grandfather married a daughter of one of Bunyan's fellow-prisoners, and was the first official shorthand writer at Old Bailey. His father was shorthand writer at the trials of Hastings, Gordon, Paine, Hardy, Horne Tooke, and his system was adopted for taking down evidence in Parliamentary Committees. His brother was a Baptist, a pioneer of the Sunday School Union and the Bible Society, a friend of Carey, and shorthand writer at the Queen's Affair; the *State Trials* (both series) are based on this brother's and his father's notes. One son became an Anglican prebendary; another helped settle the *Alabama* claims and was in charge of the Public Prosecutions Bill, 1871.—Geo. Carter, *Unitarian Biographical Dictionary* (1902).

Similarly, W. J. Fox, *Duties of Christians towards Deists* (quoted *Gent. Mag.*, lxxxix. 441): "As a Unitarian and a Dissenter I regret that the first prosecution should have been conducted by one who has acknowledged the former title, and the second by one who still claims the latter."—Sermon, October 24, 1819.

⁴ George Somers Clarke.—T. C. Campbell, *op. cit.*, p. 51.

instead the criminality of coarseness and calumny; he thus helped on the whittling down of the law of blasphemous libel which was later to make it extremely uncertain whether the offence consisted in attacking Christianity or in using objectionable language. It is remarkable that it should have been Paine's *Age of Reason* that was charged as being calumnious; for, as Carlile always maintained, its blunt and homely language was no coarser than that of parts of the Bible. One side saw blasphemy in the *Age of Reason*; the other side saw obscenity in the Bible.¹ One feels bound to regard the prosecution as political, even though the jury may have found Carlile guilty on religious grounds. In spite of its crudity there was much excuse for his asking Abbott

whether you were not the political instrument used against your will, for the protection of the clergy and the six million per annum they draw from the pockets of the People as a necessary influence and a wicked instrument in the hands of a corrupt Government.²

It was assumed that among poor people radicalism in religion was politically dangerous. It was certain that a man who was politically objectionable could be most easily convicted on a charge of blasphemy. It was possible that the whole body of Reformers might be discredited by astutely connecting them with a blasphemer. What was the result of the trial on the dissemination of the doctrines condemned? The trade of the "Temple of Reason and Office of the *Republican* and *Deist*" went up by leaps and bounds. The circulation of the *Republican* rose to fifteen thousand at the time of the editor's trial.³ Two thousand copies of Carlile's second edition of the *Age of Reason* were sold in six months, and his gross profit on these amounted to some five hundred pounds.⁴ All the money he took he invested in new publications, so that he had a great stock of printed paper, and the profits on one publication, advertised by a State trial, helped to produce others just as objectionable.⁵ During the single week of the trial Mrs. Carlile took five hundred pounds in the shop.⁶

¹ Carlile even published a *Penny Book of Bible Obscenities*; but it was not prosecuted, in spite of its "immoral tendencies."

² *Rep.*, October 22, 1819.

³ *Ibid.*, iii. 114, xiii. 607; H. G. Bennet in Commons, December 20, 1819.—*Hansard*, xli. 1354.

⁴ *Rep.*, vii. 650. Retail price, half-guinea on fine paper, eight shillings common.

⁵ *Ibid.*, vii. 679.

⁶ *Ibid.*, v. 274.

The *First Day's Proceedings of the Mock Trial* were published *in extenso* in sixteen-page sheets, and ten thousand copies were sold of each of these twopenny numbers; these contained the first cheap edition of the *Age of Reason*, as it had formed part of the first day's proceedings.¹ Then almost every newspaper throughout the whole country printed lengthy reports of this trial, which was one of the great events of the year. The *Observer* filled three of its four pages with nothing but Carlile's trials, even holding its advertisements over until the following week. There were rumours of an attempt to translate the *Trial* into Welsh.² And Tsar Alexander, apprehensive of injury to the morals of his people through their reading accounts of the Trial, had the importation of British newspapers that reported it restricted.³ Truly, "the most effective method of having a book extensively read is to suppress it by law."⁴ But politicians had not yet learned the value of advertising.

Meanwhile Carlile could have been at liberty had he been able to offer bail of £2,400 besides the £1,600 bail he was already under. In default of so excessive a bail he was again imprisoned until he should be called up for judgement.⁵

A month after his convictions Westminster Hall was thronged to excess from an early hour, and he was sentenced to two years' imprisonment and a fine of £1,000 for publishing the *Age of Reason*, one year and £500 for publishing the *Principles of Nature*, and security for good behaviour for the term of his natural life, himself in £1,000 and two others in £100 each. Then he was locked up in the strong-room and not allowed to see anyone except in the turnkey's presence, till he could be moved to Dorchester Gaol. That was a recently reformed and now well-classified prison: so Carlile was placed in solitary confinement; he was allowed to walk out for exercise three times a week, and then only with a turnkey at his heels, lest he should speak to other prisoners. The Dorset magistrates little knew the man they had to deal with. "I have no disposition or inclination to make

¹ *Rep.*, viii. 650; nine sheets published, 1819; last five and preface, 1822; there was no point in republishing other days' proceedings.

² H.O., 42. 200 (December 4, 1819).

³ T. C. Campbell, *op. cit.*, p. 52, citing *The Times*, December 29, 1819; *Gentlemen's Magazine*, lxxxix. 630.

⁴ *Scotsman*, October 23, 1819.

⁵ *Rep.*, vi. 293; *Cobbett's Register* (July 27, 1822).

converts by preaching. I leave that to priests to do, who are paid for it. My business is with the Press, and whatever I lay before the public, whether my own sentiments or the production of any other person, I have always set a price on them that would produce a fair and tradesman-like profit."¹

Whether the fine imposed on Carlile was excessive or not depended entirely on the success of his business during the next few years; but this received a great blow at the very outset. While he was being sentenced Sheriff's officers entered his premises and closed his shop, and a writ of *levari facias* was immediately afterwards brought from the Court. From November 16th till Christmas Eve they remained in occupation at the expense of Mrs. Carlile, who was lying-in at the time. Then, when the rent fell due, they left the shop and took seventy thousand publications away to an auctioneer. The seizure was not made because the publications were illegal; some of them were unobjectionable, and the majority had never been inside a Court. Nor was the stock thus seized regarded by the Government as part payment of the fines. It was legally inexplicable and irremediable. It was a far harder blow than the actual sentence. "For myself," said the victim three years later, "I can say that I have suffered more by the seizure and detention of my stock-in-trade than I should have suffered if I had been fined £5,000, and had been left to make the best of the property I possessed to meet it with at the expiry of my three years' imprisonment."²

A business which was producing a profit of fifty pounds a week was put a stop to, with unfortunate results for Carlile.

I am not only imprisoned for three years [he wrote to the Treasury Solicitor], but am to a certainty imprisoned as long as the present system of Government continues, as you have not only obtained the infliction of a heavy fine, but at the same time have taken steps to prevent the payment of that fine, with an ultimate intention of keeping me in prison whilst your employers can keep their places.³

2. THE PROSECUTION OF THE LONDON NEWSVENDERS.

Publishing is a popular term and it is a legal term; legally speaking every seller of printed matter is a publisher. Actual

¹ *Rep.*, ii. 296.

² *Ibid.*, vi. 900.

³ *Ibid.* (December 17, 1819).

publishers like Carlile were in every sense publishers, and the risk they ran was what they expected to run; but shopkeepers and even street-sellers were also publishers, legally speaking. Prosecutions might be launched against the poor vender of newspapers who awoke Londoners in the morning with the sound of his horn and was quite indifferent to what he sold.¹ The Attorney-General might even condescend to file ex-officio informations against men who may not even have known the contents of what they sold. It seems almost incredible that twenty-five such informations should have been filed against ten London news-venders and booksellers besides Carlile in 1819.² One of them was Dolby, who published *Cobbett's Register* and *Dolby's Parliamentary Register*; another was Shorter, who brought out the *Deistical Comet* and the *Democratic Recorder*; yet neither was prosecuted for his own publications. The rest were quite undistinguished men engaged in a very humble and unintelligent occupation; their business was simply to fold the sheets and retail them; yet two even had five informations filed against each of them.

The publications they were prosecuted for selling were the weeklies issued by Carlile. One, *Sherwin's Register*, vol. v. No. 13, with Sherwin's letter to the soldiers, produced three informations. Another, No 16, with Carlile's account of Peterloo, produced three more. A third was the *Republican*, No. 2, with an open letter from Carlile to the Prince Regent "on his thanking the magisterial and yeomanry assassins for murders committed by them on the 16th of August last"; hence came seven informations. No. 3 contained a letter to the inhabitants of Manchester and its vicinity "who escaped with their lives from the wanton and murderous attack made on them by the brutal armed force called the Cheshire and Manchester Yeomanry Cavalry," advising them to "be prepared to act on the defensive," and "seek some more advantageous spot for self-defence," next time: "Let every man be prepared to sell his life as dearly as possible, and I'll pledge mine that we can beat off the combined yeomanry cavalry of the whole country," said Carlile. "In this country under the present state of things, I will never attend a public meeting on any political

¹ Cf. Lord Holland in Lords (December 6, 1819).—*Hansard*, 724.

² *Accounts and Papers*, 1819 (18), iv. 173.

question of Reform without arms. Once having escaped with life is, I hope, sufficient justification—I trust that I have here pointed out the necessity of attending that meeting with arms in your hands.”¹ For selling this there were five informations.

A week later Carlile began: “One month has now elapsed since the peaceable inhabitants were indiscriminately massacred and murdered by the drunken and furious Yeomanry Cavalry, set on by the Magistrates of that town to perform the horrid deed.”² Lord Sidmouth “expressed his anxious desire that the same should be laid before the Attorney- and Solicitor-General without *delay* in order that *immediate* steps may be taken under their direction for prosecuting the publisher, vender, and author.” The Law-officers only had to advise on the best method of prosecuting, as the decision to prosecute had thus been made by the Home Secretary. “We are of opinion,” they replied, “that if this publication be made the subject of prosecution the proper course of proceeding will be by criminal information in the name of the Attorney-General.”³ The Treasury Solicitor thereupon had copies purchased from the newsvenders, and seven informations were filed against them.

The kind of publication arbitrarily selected for this peculiar treatment is remarkable. It consisted mainly of heated, though perhaps justified, criticism of the authorities, and to some extent also of anti-Christian argument. There was also, on one occasion, direct incitement to mutiny, and, on another occasion, incitement to attend public meetings with arms; although we can understand the provocation under which such letters were written, we must admit that there are circumstances in which only successful revolution can justify the explicit advocacy of such dangerous measures. The Home Secretary might well have distinguished between two such different kinds of article, allowing the former, which simply caused disaffection, to pass unnoticed, while using such emergency powers as he had not got for completely and immediately suppressing incitements to disorder in disturbed districts at a time of crisis. But the Home Office had not yet learned how to be strict and how to be generous: it took fright at the

¹ *Rep.* (September 10, 1819). Passages marked in H.O. 48. 23 (September 28, 1819).

² *Ibid.* (September 17, 1819).

³ H.O., 42. 195 (September 25, 1819).

first signs of discontent, without waiting for exhortations to specific and physically dangerous overt acts; yet it did not effectively suppress what it attacked. It had not learned the art of discrimination and concentration. It spread its net too wide, and caught more of the small fry than it need have done for any purpose except frightening them.

An account of the attack on the Metropolitan venders of *Republican* No. 2 will show how ineffective were the measures taken.¹ The paper was published on Friday, September 3rd. Some Bow-street police officers made oath that it was seditious and inflammatory. On Tuesday, the 7th, four men were brought before the Bow Street Police Magistrate, Sir Robert Birnie, on warrants charging them with publishing a libel in that pamphlet, and alleging "that it 'imputes the crime of murder to the Magistrates and Yeomanry Cavalry of Manchester,' etc.—Well! And what even if it *do* impute the crime of *murder* to the *Manchester Bloodhounds*? Are they not deserving of it?" So wrote one of them in a paper published the following Saturday.² Two days later two others were brought up.³ One who had a small lock-up shop in the Strand for the sale of all kinds of pamphlets boasted of selling upwards of six hundred copies.⁴ All were bailed, though all refused to pay the Clerk's fees. Carlile, who was not yet charged with the publication, was there, and he gave bail for any who needed his help, although already under recognizance of £1,600 for himself; when asked whether he was aware of the offence for which the men were charged, he avowed himself the author of the article, and the editor, printer, and publisher of the paper.

When the venders had been arrested and held to bail, the Treasury Solicitor wrote to the Assistant Under-Secretary asking for official instructions to do what he had already begun to do prior to consultation.⁵ He was instructed to take the necessary

¹ *Rep.*, September 17, 1819, and February 22, 1822.

² R. Shorter, in *Theological Comet* (September 11, 1819). The four venders were: Cahuac, of Blackman Street, Southwark; Harris, of Broad Court, Long Acre; Watling, of the Strand; Robert Shorter, of Wych Street.

³ Thomas Whitehorn, of Evesham Buildings, Somers Town; James Sainbury, of Pulteney Court, Golden Square.

⁴ *Statesman* (February 25, 1820).

⁵ "I believe it is Lord Sidmouth's intention that I should have directions to proceed against these venders, and I will therefore thank you for the usual official letter upon the subject, transmitting the enclosed pamphlets and papers."—Maule to "My dear Clive" (September 12, 1819).—H.O., 42. 194.

step for prosecuting the venders under the direction of the Law-officers with as little delay as possible.¹ An attempt was made to proceed by indictment; but one of them was soon able to congratulate the Middlesex Grand Jury on daring to throw out these bills "at the suit of the Lord knows whom," "in an age of bloodshed and persecution."² So they went to the Middlesex Sessions-house and demanded discharges from their recognizances; but, as before, they refused to pay the Clerk his usual fees.³

After Shorter, one of the men thus discharged, had taken to printing the *Democratic Recorder*, and after a prejudice had been created against the Radicals by the conviction of Carlile, the Government returned to the charge.⁴ This time they dispensed with bills of indictment and Grand Juries: the Attorney-General made sure of a prosecution by filing ex-officio informations against men whom a Grand Jury had refused to indict.⁵

Five were brought up at King's Bench next year; on Carlile's advice they employed no lawyers and they paid no fees, and they were there found Guilty.⁶ At the next Surrey Assizes similar verdicts were returned against one of them who came from Southwark, and against another man from the same neighbourhood who had been indicted for the same publication: the latter was

an old and ailing man, and scarcely able to earn enough in his profession as a shoemaker to support himself and his wife; he was consequently in the habit of selling political pamphlets to complete the means of living without parochial aid. His defence was that he was a general vender of political pamphlets and did not read them to know what they contained, as his whole time was occupied in doing what little work in his business his strength would admit of.⁷

The jury recommended him to mercy, and refused to retract their recommendation when the Chief Baron told them they would be sending such publications among the most ignorant of the community.

In May 1820 these men were brought up for judgement on this and other similar convictions.⁸ One of them pleaded in mitigation

¹ H.O., 41. 5, p. 25 (September 13, 1819).

² R. Shorter in *Comet* (September 25 and October 2, 1819).

³ September 30, 1819.

⁴ H.O., 49. 7, p. 130 (November 2, 1819).

⁵ *Comet* (November 13, 1819), last number.

⁶ *Annual Register* (1820) Chronicle, p. 49 (February 24, 1820).

⁷ *Rep.*, ii. 452.

⁸ May 9, 1820.

that they had sold these weeklies, not from any political motive, but in order to make a trifling profit; that they were ignorant at the time of sale that they contained illegal passages; that it was impossible for a bookseller or newsvender to read everything he sold; that so far as they knew they had sold nothing illegal since their trials; and that the families they had to provide for would be ruined by heavy sentences. In spite of any recommendation to mercy they were all sentenced—three to six weeks' imprisonment, the rest to one month—and all to give recognizances for their good behaviour for three years, themselves in £50 and two sureties in £25 each.

It is remarkable that Richard Carlile, who was the author of nearly the whole of the *Republican* and of the last number of *Sherwin's Register*, was never tried for anything he wrote in either paper, and that W. T. Sherwin was not tried at all, although both men signed all the articles they wrote. Sherwin was a printer and not a publisher; but he would probably have sold a copy of his own work if he had been pressed to do so.¹ The trial of Dolby, Cobbett's publisher, for selling Sherwin's letter to the soldiers, was put off specially because Sherwin, who intended to avow himself the author, had gone into Northamptonshire to take possession of some property, as he had just come of age; yet neither was ever tried.² "We have pretty good proof," wrote Carlile, "that the Attorney-General does not altogether want the authors; he knows that the authors remain authors after committed to prison; but the vender who has a large family is sure to be ruined and reduced to misery by the prosecution. It is here only, that the Attorney-General can act with effect."

"It is a most cruel and barbarous measure to prosecute the venders of the publications whilst the author and original publisher is always forthcoming. There might be some degree of plausibility on the part of the Attorney-General if the pamphlets were anonymous, and published originally by some person whom he could not reach, or who might confine his sale to these venders only. Here he would have a fair excuse, but the *Republican* has always been retailed at the place of its first publication, and the proprietor always to be found."³

¹ *Sherwin's Register*, v. No. 8.

Rep., ii. 228.

³ *Ibid.*, iii. 110 (May 19, 1820).

Men who had no sympathy with Carlile himself felt compassion for the "poverty-struck venders" who had the whole power of the State pitted against them.¹ The Home Secretary frightened the venders, and to this extent he was successful. But political success cannot be thus narrowly measured: Lord Sidmouth did not gain the good will of the people by such prosecutions, and he brought home to them the personal suffering and inconvenience that the strict application of the Law of Seditious Libel brought in its train. The long-drawn-out provincial prosecutions were gradually to arouse the same feelings even more strongly, and every success of the Attorney-General in carrying out the Home Secretary's policy was to make the abandonment of that policy more certain in the end.

3. PROVINCIAL PRESS-PROSECUTIONS.

In 1819 prosecutions for seditious and blasphemous libel were set going all over the country; hitherto they had been almost confined to the Metropolis, and if occasionally a provincial press-prosecution occurred it was against a country gentleman rather than a working man. London had been, and still was, the Printing Office of Radical Reform; but few of the Radical writers in London were Londoners, so that they understood the outlook of the workers of the provinces, and the men and women of the provinces bought and sold their papers. There were also, as we have seen, a few local Radical weeklies, and one such paper, the *Manchester Observer*, had a nation-wide reputation, until it was absorbed a few years later in Wooller's newspaper business. The demonstrations that were held at Birmingham and Manchester, Stockport and Leeds, were as important as any held around London. Political interest was being rapidly diffused over the whole country and amongst all classes, and this diffusion had its effects on the Struggle for the Freedom of the Press. Arising out of the popular movement of 1819 there were some seventy-five prosecutions for seditious and blasphemous libel, over half of which were centred outside London.² The struggle was being carried on all over the country.

¹ *Constitution* (Sunday, February 28, 1820).

² A detailed return of nearly all prosecutions for libel, sedition, and blasphemy, in *Commons Journals* (1823), lxxviii. 1082 sqq.

Even before Peterloo a Proclamation had announced the need of "diligent inquiry to discover and bring to justice the authors and printers of . . . wicked and seditious writings," and when Members of Parliament were going back to their country seats for the summer recess, "I have no doubt," said the Regent's speech from the Throne, "that on your return to your several counties you will use your utmost endeavours, in co-operation with the magistracy, to defeat the machinations of those whose projects, if successful, could only aggravate the evils which it is professed to remedy, and who, under the pretence of Reform, have really no other object but the subversion of our happy Constitution."¹

Among those that attracted the attention of the local magistracy was James Wroe, an acquaintance of Richard Carlile, the proprietor, printer, and publisher of the *Manchester Observer*, and a Manchester agent for London Radical publications.² Immediately after the meeting in St. Peter's Fields on August 16th he brought out an anonymous account of what happened there, in fourteen twopenny parts, of some of which over twelve thousand copies were sold, and it ended with a list of nearly four hundred dead, wounded, and injured. Its editor, whoever he was, dubbed it the *Peter-Loo Massacre*, in derision of the "Waterloo-man" who had just become a member of the Cabinet. This was well advertised on handbills and in the *Manchester Observer* as

A full, true, and faithful account of the inhuman murders, woundings, and other monstrous cruelties exercised by a set of *infernals* (miscalled soldiers) upon an unarmed and distressed People, who were constitutionally assembled to consider of the best, most legal, and most efficient means of alleviating their present unparalleled sufferings, when they were broken in upon by *bands of armed ruffians* who murdered many and cut and maimed hundreds more in a horrid manner.³

An apprentice in Wroe's shop sold a copy of the paper advertising the *Peter-Loo Massacre*, and at the Epiphany Quarter Sessions,

¹ Proclamation against seditious libels, harangues, and riots (July 30, 1819) in *Annual Register*, p. 123. Speech from the Throne (July 13, 1819) in *Hansard*, xl. 1572; Bentham's reply in a letter to the *Morning Chronicle* (July 21st) alluded to "the late Acts for Preventing Communication of Sentiments between Man and Man."

² What follows is taken mainly from *Manchester Observer*, January 8th, 22nd; February 12th, 19th; March 4th; April 18th; July 22, 1820; and from *Lancaster Gazette*, October 30th; November 6, 1819; January 29th; February 5th; April 15, 1820.

³ Handbill in H.O., 42. 193 (August 24, 1819).

where a clerical magistrate was in the chair, he was sentenced to four months' imprisonment and to give recognizances for two years' good behaviour.¹ The wife of one of Wroe's journeyman compositors sold a copy at her husband's house and was given six months' hard labour.² Her daughter, a girl of seventeen, was fined five pounds for the same crime.³ James Wroe's little son, who was only ten years old, was fined sixpence.⁴ A Bolton man who had sold Sherwin's letter to the soldiers was imprisoned for twelve months.⁵ When James Wroe was first brought before the Justices they tried to make him give bail not only to appear when called on, but also to keep the peace, or in other words to refrain from publishing under pain of forfeiting his bail.⁶ He left the court without paying any fees; he made affidavit that he could not expect a fair trial before the local magistrates, and so he had the trial transferred to the Crown Court at Lancaster. There the remainder of the Wroe family were tried before Mr. Justice Bayley; his wife and two sons were allowed out on bail; he was charged on eight indictments, and was found guilty of them all, but he was imprisoned only twelve months and fined £100; it was understood that the prosecutors would call for sentence on any member of the family who published anything indictable, and therefore for the present Wroe's sentence was nominally only for publishing two numbers of *Sherwin* which had been purchased at the request of the Home Office.⁷ Owing to the cost of the prosecution he had to sell his *Manchester Observer* and was left almost bankrupt. "Mr. Wroe has suffered more in pocket and in health from the accumulation of indictments," wrote Carlile, "than any other individual in the country. I can boast of a greater number, but they never afflicted me in a like manner. Indictments and warrants were always the life of my business; therefore they were rather to be desired."⁸

The heaviest sentence passed on any Englishman for a political

¹ John Charlton was sentenced, January 27, 1820, by the Rev. W. R. Hay, Chairman of Salford Quarter Sessions, who was appointed to the Vicarage of Rochdale, worth £1,800 a year, in January 1820, as a reward for his political activities.—F. R. Raines, *Vicars of Rochdale*, ii. 295 sqq.

² Louisa Hough.

³ Sarah Hough.

⁴ David Wroe.

⁵ Joseph Shaw, prosecuted by Treasury Solicitor.—H.O., 41. 5, pp. 27, 74; H.O., 42. 195 (September 26, 1819).

⁶ November 2, 1819.

⁷ H.O., 41. 4, pp. 403, 415. Trial, April 6, 1820.

⁸ *Rep.*, ii. 50.

offence in 1819 was passed in the neighbouring county of Cheshire, which in Sidmouth's estimation "stands first at present in demonstration of public spirit and loyalty."¹ Early in July the Lord-Lieutenant and the county magistrates resolved that evil-disposed and designing persons had taken advantage of the trade depression wickedly to disseminate inflammatory doctrines, thereby inciting the ignorant and unwary to insurrection; and they had asked for special information as to the proceedings of the disaffected in the Hundred of Macclesfield.² At the end of July there was a great meeting at Stockport, addressed by Sir Charles Wolseley and a Nonconformist minister, who were both arrested for uttering seditious words; the constables were very roughly handled by the mob, both then and afterwards.³ This was followed by a smaller meeting at Macclesfield, and on the platform there, as one of the members of the committee that organized the meeting, there was a man named Joseph Swann, whose struggle the world was to hear about only after the lapse of several years.⁴ He was a hat-maker who also sold a few Radical weeklies, which he used to get from Stockport, twelve miles away.⁵ What his character was we do not know. The night after Peterloo, while the cavalry were still away at Manchester, there was an ugly riot at Macclesfield by Radicals intoxicated with liquor and with rage at the news of the proceedings at Manchester. The windows of a loyalist newspaper-printer and of the postmaster,

¹ H.O., 42. 197 (October 18, 1819).

² *Hansard* (1819), xli. 231.

³ H. Jephson, *The Platform*, i. 475 sq.

⁴ *Republican*, v. 651 (March 19, 1822), vi. 643 sqq. (October 18th). He must not be confused with Cobbett's paper-maker of the same name, though he was known to Cobbett, who addressed the following open letter to him: "CASTLE-REAGH HAS CUT HIS OWN THROAT AND IS DEAD! Let that sound reach you in the depth of your dungeon; and let it carry consolation to your suffering soul! Of all the victims you have suffered most. We are told of the poignant grief of Lady Castlereagh; and, while he must be a brute indeed who does not feel for her, what must he be who does not feel for *your wife* and your four helpless children actually torn from you when you were first thrown into the dismal cells!"—*Cobbett's Weekly Political Register*, xliii. 385 sq. (August 17, 1822).

"I admired your conduct at the time when the sentence was passed upon you. You did not talk of cutting your throat; but, darting a look at those who passed the sentence, you exclaimed: 'Is that *all*? I thought you had a *bit of rope* in your pockets for me!' Your children are in misery now; but be of good cheer; they may live to see the day when they will not have to mourn over a father in a dungeon."—*Ibid.*, 424 sq.

⁵ "He was never any known agent of mine."—Carlile in *Rep.*, vi. 21. "He must have sold very few, and whence he got them I know not; he did not get any direct from me."—*Ibid.*, p. 25.

among others, were broken. Next day the military arrived; the Mayor read the Riot Act, declared the town in a state of rebellion, and handed it over to the military.¹ It was never suggested that Swann was one of the rioters; but gentlemen persuaded his employer to turn him away, so that pamphlets remained his only source of livelihood.² He was arrested; the Mayor wanted something effectual to be done to prevent the introduction of inflammatory and demoralizing pamphlets into the houses of the working classes.³ The magistrates were indignant at the machinations of demagogues and at blasphemous publications.⁴ So when Swann offered bail it was refused, and he remained in a House of Correction for full two months, at the end of which time he was called up to the Quarter Sessions on indictments, first for seditious conspiracy in helping to arrange a public meeting, and secondly for blasphemous libel in selling the *Comet*. He postponed his trial by traversing till next session, and he gave bail. "He is now at large," wrote a Cheshire gentleman to the Home Secretary, "and I fear he is again going on with his old trade as a vender of pamphlets; we shall, however, keep a watchful eye upon him, and the magistrates will not hesitate to take him up again if a case can be made out against him."⁵ They did not hesitate long. Before Christmas he was again arrested by the Constable and imprisoned in the town gaol for publishing two libels in the *Republican*—the one a blasphemous letter to Carlile saying that equitable laws would be impossible till the people put away the Bible and read the *Deist* and the *Age of Reason*, the other a seditious poem saying:

Off with your fetters; spurn the slavish yoke;
Now, now, or never, can your chain be broke;
Swift then rise and give the fatal stroke.⁶

A few days later he would have been chained to a felon and sent to another gaol, if his wife, who had joined him along with their three children, had not prevented it by fainting. On New Year's morning, before it was light, he was taken in an open cart, although it was bitterly cold, to a crowded and insanitary House

¹ *Hansard*, xli. 269.

² *Manchester Observer*, August 28, 1819.

³ H.O., 42. 193 (August 25, 1819).

⁴ *Hansard*, xli. 265.

⁵ H.O., 42. 197 (October, 1819).

⁶ *Birmingham Chronicle*, January 20, 1820.

of Correction at Middlewich; ten days later he was taken to lie in the straw of Chester Gaol, linked to a chain with a number of other prisoners. Next day he was brought up at the Epiphany Quarter Sessions, convicted, and sentenced by a commander of the Cheshire Yeomanry at Peterloo to two years' imprisonment for seditious conspiracy, a further two years for blasphemous libel, and a still further six months for seditious libel.¹ He passed a week on bread and water in the condemned cells, and was then removed to the felon's ward.² His wife was released when she promised to sell no more pamphlets.³ She was reduced to almost complete destitution: there was herself to keep, and four children now to bring up, on a parish allowance of nine shillings a week, and a little occasional help from Cobbett and Carlile.⁴ Four and a half years later Joseph Swann "passed the gate of Chester Castle . . . in mind as stubborn as ever," visited Carlile, and with his well-merited help set up on his own as a hat-maker once more.⁵

In the Black Country also there was a struggle, with the one great difference—that in Birmingham both sides were organized with a Union Society for the Radicals and also a Loyal Association for the Suppression and Refutation of Blasphemy and Sedition.⁶ The great trial there arose from the seditious conspiracy to elect a representative to Parliament without lawful authority: old Major Cartwright was fined £100 for sitting on the platform at the meeting, but only after he had given an advertisement to a brilliant young Birmingham Radical who had just been called to the Bar—Matthew Davenport Hill, the brother of the future Sir Rowland Hill. This trial indirectly touched the Press, as Wooler was imprisoned for fifteen months and George Edmonds for nine months.⁷ But for this the proprietor of *Edmonds' Weekly*

¹ *Rep.*, vi. 497.

² In prison he picked up what learning he could, and followed his old trade, at least so far as to knit Carlile a nightcap, which the latter used as a pudding-cloth on an occasion to be mentioned later.—*Ibid.*, vi. 556, ix. 745.

³ *H.O.*, 41. 5, p. 481 (January 6, 1820).

⁴ Petition presented May 11, 1824, by John Williams (Whig), who had himself been counsel for the prosecution, but had not been responsible for the original proceedings or for the duration of the punishment.—*Hansard*, xi. 643 sqq.

⁵ *Rep.*, x. 132, 214, 448.

⁶ *Birmingham Chronicle* (Tory), *passim*. This paper had almost as much news about Carlile as the London papers had. Hon. Sec. and Treas. of Loyal Association was a George Barker.—*H.O.*, 42. 199 (November 20, 1819).

⁷ June 1, 1821; July 26, 1822; *Add. MSS.* 37949, f. 98, Wooler to Place (October 4, 1821).

Register would have been sentenced for a libel on the magistrates, of which he had been convicted, and Wooler might not have escaped prosecution for the *Black Dwarf*.¹ The pioneer of the Radical Press there was a bookseller named Russell; he was under prosecution for selling Hone's parodies since 1817, but he was not tried and convicted at Quarter Sessions till the summer of 1819.² This provincial verdict against a publication which a London jury had laughed at was very welcome to the Government and its supporters. "The result of Russell's trial will, I trust," wrote Sidmouth to a Warwickshire magistrate,

operate as an encouragement to magistrates in every part of the Kingdom to show their confidence in the intelligence and integrity of British juries on similar occasions. You have in this instance, by your firmness and perseverance, given an additional proof of your solicitude and determination to afford all the protection in your power to sound and loyal principles against the attacks with which they are assailed.³

The cost of this prosecution, amounting to nearly £400, was borne by the Treasury.⁴ But Russell continued business as usual until he was actually sentenced, and when the Home Office asked for copies of the *Republican* to be purchased in Birmingham, purchases were made of him and he was convicted a second time.⁵ At the request of the Government copies of two numbers of *Sherwin's Register* were bought of another man, who was also prosecuted simultaneously, at the instance of the Birmingham Loyal Association, for selling part of the *Black Book*, which the jury agreed was a libel bringing the Established Church into contempt.⁶ Another man, George Ragg, the printer of the *Birmingham Argus* and vice-president of the Union Society, was also doubly prosecuted: by the Association for selling the *Black Book*, and by the Government for selling the *Republican*.⁷ In the latter case,

¹ H.O., 41. 4, p. 344; 42. 199 (November 30, 1819); 41. 5, p. 456.

² Joseph Russell, *Trial* (Birmingham, 1822); *Manchester Observer*, July 10, August 21, 1819. Thomas Denman (later C.J.) offered to defend him gratuitously.

³ H.O., 41. 4, p. 487.

⁴ H.O., 42. 195 (September 23, 1819); H.O., 41. 5, p. 447.

⁵ H.O., 42. 195 (September 23, 1819). Six months in prison for first offence, eight for second; another three months, 1833.—*Birmingham Chronicle* (August 10, 1820).

⁶ James Osborne.—H.O., 41. 4, pp. 403, 416, 470; H.O., 42. 197 (October 22, 1819). Twelve months in prison.

⁷ Both these ecclesiastical libels were omitted from the Return of Political Libels.—*Commons Journal*, lxxviii. 1082 sqq. But see *Republican*, ii. 49 sq., citing *New Times*.

immediately he was committed to prison for default of bail, one of the magistrates hurriedly scribbled a two-line note to Lord Sidmouth, while the mail-coach was stopping in the town, conveying the glad tidings of the commitment; and the Home Secretary made a characteristic reply:

The apprehension and commitment of Ragg is calculated to produce a very beneficent effect, particularly if he should be unable to find bail.¹

The Chairman of the Union Society was also sentenced to prison for a year for having the town placarded with an address from the Birmingham Union Society to the people of England.² Another man had had six hundred copies of an *Address to the Reformers* printed; some had been given to the Union and some had been sold for three-halfpence each by Ragg and a barber; too poor to give bail or retain counsel, he had already been in prison six months, and he was now sentenced to another year in gaol.³ W. G. Lewis, of Coventry, was also imprisoned for two years and fined £50 for copying into his twopenny *Recorder* a London article describing "applauding murder" as the worst of murders, besides being fined £100 for selling ground roast corn as a "break-fast powder" and advertising roast peas as a coffee substitute; a subscription had to be raised on his behalf.⁴

At Dudley the proprietor of the twopenny *Patriot* met with such strong feeling that the filing of an information sufficed without proceeding to trial; "the loyal inhabitants of Dudley have had the *Patriot* suspended upon a gibbet at the market cross all this afternoon, and it has this evening been publicly burnt," wrote the constable; and the same official issued a warning to publicans, by order of the magistrates, that licences would be suspended at any time if information upon oath were received of any seditious or blasphemous publications being taken in, for either private or public reading in a public house.⁵ All these

¹ H.O., 42. 198 (November 2, 3, 1819); H.O., 41. 5, pp. 206, 214. Ragg was sentenced to twelve months in Middlesex House of Correction. He was known to the Benthamites.—A. Bain, *James Mill, a Biography*, p. 439.

² Charles Whitworth.—H.O., 41. 5, p. 387 (December 14, 1819).

³ Joseph Brandes.—*Birmingham Chronicle* (December 14, 1819).

⁴ Exchequer sentence, June 26, 1820; King's Bench, November 27, 1820. Subscription advertised, *Manchester Observer* (July 22, 29, 1820). On the subject of "Radical Breakfast Powder" see *Rep.*, vi. No. 1 and No. 4; also the Roast Corn, Peas, Beans, and Parsnips Act, 3 Geo. IV. c. 53.

⁵ H.O., 42. 194 (September 15, 1819); H.O., 42. 198 (November 6, 1819).

prosecutions were expensive, and the expenses could not possibly be defrayed by voluntary local effort, even when it was organized as at Birmingham. Committals may often have been the work of magistrates; but subsequent legal proceedings were not paid for by them. Altogether the Treasury paid over a thousand pounds towards the cost of four Birmingham prosecutions for libel, none of which it had itself instituted, besides the unknown sums it paid for those directed by the Treasury Solicitor himself, so convinced was Lord Sidmouth of the public advantage resulting from the Loyal Association's efforts.¹

In Yorkshire the authorities were specially vigilant owing to the presence there of troops in considerable numbers.² Sergeants could hardly read the *Black Dwarf* or similar publications without Lord Sidmouth being informed of it, and even anonymous letters were enough to make him inquire into such a charge.³ Sherwin's letter to the soldiers was reprinted for free distribution.⁴ No one was prosecuted for this; but a man at Hull was indicted because an officer heard that he had sold to a private a copy of *Sherwin's Register* containing this letter.⁵

In the West Riding the Mayor of Leeds was asked by the Home Office to purchase a copy of *Sherwin's Register* which described the Regent as an overgrown pauper and an unfeeling wretch.⁶ This the Mayor did, and he subsequently sent up other purchases made at the shop of the same James Mann.⁷ The Secretary of the General Post Office opened letters addressed to Carlile and Wooler and found Mann ordering their publications.⁸

¹ H.O., 41. 6, pp. 438, 439, 446; and above.

² H.O., 42. 195 (September 29, 1819), from Major-General Byng, Commanding Northern District.

³ H.O., 42. 197 (October 18, 1819).

⁴ H.O., 41. 4, pp. 422, 426, 470.

⁵ H.O., 41. 5, pp. 71, 72; H.O., 42. 195 (September 22, 24, 1819); H.O., 42. 197 (October 22, 1819). Not included in Return in *Commons Journals* (1823), lxxviii. 1082 sqq. Complaint was also made from Hull about the *Democrat* and *News from Scotland*, partly because they were unstamped.—H.O., 42. 193 (August 28th), and 194 (September 3rd); H.O., 41. 4, pp. 443, 444, 545; H.O., 49, 7 (July 12th).

⁶ *Sherwin's Register*, vol. v. No. 11 (July 17, 1819). H.O., 41. 4, p. 403.

⁷ *Ibid.*, pp. 420, 527; H.O., 42. 193 (August 24th). Mann spoke at a Hunslet Moor meeting, August 19, 1819.—*Leeds Independent* in H.O., 42. 193 (August 26th). Someone named Mrs. Mann was imprisoned for selling unstamped newspapers at Leeds in the 'thirties.—W. Lovett, *Life and Struggles* (ed. 1920), i. 63.

⁸ H.O., 42. 193 (August 24th). Cf. Erskine May, *Constitutional History*, ch. xi.

So he was indicted and tried at the York Assizes.¹ He was there defended by a serjeant-at-law, and was convicted only after the jury had twice tried to return a verdict of "Guilty of publishing."² This was the only jury throughout the country that showed any signs of rebelliousness in 1820; but Yorkshire was a county in which even the Lord-Lieutenant had to be suspended for calling a Radical meeting. Although nearly two hundred pounds had been spent on his prosecution, James Mann was never sentenced.³

The prosecution of venders was not confined to the new industrial districts, but was to be found also in the West Country, where the squibs of 1817 were still circulating. A Plymouth hawker cried penny political pamphlets for sale in the surrounding country, till he was brought before the Mayor of Penryn for selling Hone's *Catechism*, and two locally printed addresses to the Archbishops and Bishops of England, and another pamphlet called *More Signs of the Nation's Coming to its Senses*. The Treasury Solicitor drew up a proper indictment, while the Town Clerk, at whose request he was instructed to do this, kept the hawker in prison and intercepted his correspondence in the hope of discovering some disaffected persons whose instrument he was assumed to be.⁴ At Exeter a cripple who had no means of livelihood except pamphlet selling was arrested by the Mayor for selling a seditious libel in the Peterloo number of *Sherwin*, and prosecuted simultaneously by a number of gentlemen for selling Hone's widely circulated *Catechism*. What gave most offence was Hone's parody on the Lord's Prayer:

Our Lord who art in the Treasury, whatsoever be thy name, thy power be prolonged, thy will be done throughout the empire, as it is in each session. Give us our usual sops, and forgive us our occasional absences on divisions, as we promise not to forgive them that divide against us. Turn us not out of our places; but keep us in the House of Commons, the land of Pensions and Plenty; and deliver us from the People. Amen.

For retailing these works this cripple was imprisoned till he could provide bail, himself in £200 and two sureties in £100, to

¹ H.O., 42. 197 (October 25th).

² March 15, 1820.—*Manchester Observer*.

³ H.O., 41. 6, p. 444.

⁴ Thomas Hynes.—H.O., 41. 4, pp. 246, 247, 317; H.O., 49. 7, p. 117; H.O., 42. 195 (September 21st); *Republican* (October 1, 1819). He was sentenced to six months in prison and one shilling fine, August Assizes 1819, just before the ramp began.

answer each charge. Meanwhile his sister and a child fifteen years old were held in custody for selling the *Republican*, until they agreed no longer to sell any publication whatever for him. The Mayor then purchased their whole stock-in-trade, and had it burnt in front of the Guildhall on market-day. The Mayor received a congratulatory letter from Lord Sidmouth:

It afforded me great pleasure to learn that the venders of those mischievous and detestable libels . . . were under prosecution at Exeter. I should be extremely sorry if the prosecution which you have instituted for the latter [Sherwin] was withdrawn. It is fortunate when such publications are taken up by magistrates and other persons of respectability in the places where they are sold, and a prosecution carried on by them for obvious reasons is to be preferred to one carried on by the Government; but a reluctance to take the step, and to follow it effectually, is not unfrequently occasioned by an apprehension of the expense necessarily attending it. [Whitehall would therefore bear all reasonable expenses.] A greater service [he concluded] cannot be rendered to the country at this time than by activity and perseverance against the authors, printers, and publishers, including itinerant venders, of blasphemous and seditious tracts. If the friends of the Constitution throughout the Kingdom will stand forward and equal the activity of its enemies, internal tranquillity will soon be restored.¹

The criminal was convicted at the Exeter Sessions, with the Member for the City sitting as Recorder, and sentenced to six months' imprisonment for the seditious libel, nine months for the blasphemous, and further imprisonment until he should give security in £200.² Perhaps the Devon Justices felt they must redeem their county from the stain of having been the birthplace of the Deist and Republican, Carlile. One of them, a Prebendary of Exeter Cathedral, caught a man a short distance from his vicarage at Chudleigh exhibiting a coloured print of Peterloo in a peep-show he carried round the country, and he sent him to the House of Correction till the next session.³ The Home Office decided to thank the reverend magistrate for his vigilance, but it did not deem it necessary to pursue the matter farther, as the man would already have undergone five or six weeks' imprisonment before the sessions and without being tried.⁴

¹ H.O., 41. 5, pp. 43 sqq.

² James Tucker—H.O., 41. 5, pp. 2, 517; H.O., 42. 194 (September 1st), 195 (September 16th), 197 (October 22nd); letter from Tucker in *Republican* (October 1, 1819); *Ibid.*, ii. 47 sqq.; *Scotsman* (January 17, 1820).

³ This print is still in H.O., 42. 199 (November 25, 1819).

⁴ *Ibid.*, *ut supra*; cf. Hammond, *Town Labourer*, p. 72.

The University of Oxford had been troubled early in the summer of 1819 by the sale of a work called *Christianity Unveiled*. A resolution against its circulation was passed by the Vice-Chancellor, the Heads of Houses, and the Proctors. Lord Grenville brought it to the notice of Lord Sidmouth, and the latter offered to pay the cost of prosecution out of the Treasury.¹ Nothing more seems to have come of this prosecution; but a few months later the Vice-Chancellor was able to send up a placard advertising *Sherwin's Register*, No. 16, containing Carlile's account of the Manchester occurrence.² "The first importation of treason," as the Vice-Chancellor called it, was soon sold off; but as soon as the second arrived he had a copy purchased from a labourer named Vines, who was arrested, brought before him, and held to bail, along with his old father, under whose roof and in whose presence the seditious paper had been sold. The old man had some difficulty in finding two sureties; his son played the hero, disdained to solicit bail, "would endure much worse than imprisonment, rather than subject a friend, by applying to him, to the suspicion of treason, and probably to the loss of business," and he was, therefore, committed to Oxford Castle.³ Five months later both were convicted at Quarter Sessions, the younger being sentenced to six months in the county gaol and the elder to two months there, and each to give security for one year's good behaviour.

Although the punishment inflicted upon these men appears to be but slight, Lord Sidmouth hopes that it will be sufficient to deter them from the repetition of their offence, and others from the commission of a similar misdemeanour.⁴

So England was sprinkled with prosecutions for public libel. London, the Manchester neighbourhood, the Black Country, Yorkshire, Devon and Cornwall, and Oxford, all saw venders prosecuted and punished, while authors went scot-free and con-

¹ H.O., 41. 4, pp. 302, 478; probably the American translation of Holbach's work, published by Carlile in London in 1819, both as a pamphlet and as part of the *Deist*.

² H.O., 42. 193 (August 23, 1819).

³ H.O., 42. 193 (August 31, 1819); H.O., 41. 5 (September 1, 1819).

⁴ H.O., 41. 5, p. 491. It was said that the old man was dismissed from the Clarendon Press, for which he had worked half his life, with a pension of five shillings a week, and that only on condition that he never again allowed any political pamphlet to be sold under his roof, so that he had to apply for parochial relief.—*Rep.* (October 1, 1819).

demned publications still circulated. Outside London it was a campaign of prosecution carried on with but little plan or system. The Home Office often gave encouragement or advice, and the Treasury sometimes oiled the wheels of prosecution. But nearly all these prosecutions were commenced through the initiative of the Justices of the Peace, the clergy of the established Church, the officers of the army, and a loyal association. The spirit of intolerance was abroad. Whenever a pamphlet-vender raised his head he was liable to be sniped at in this ill-organized guerrilla warfare. Every man who was not a Radical or a Deist imagined himself a born judge of sedition and blasphemy. Such being the state of opinion among persons connected with the government of the country, much that was ridiculous occurred amid still more that was quite unreasonable. An acquaintance of the Under-Secretary even told a story of how "a most exemplary character, both civil and religious," who distributed strictly orthodox tracts for the Religious Tract Society, was supposed to be chargeable because one of these leaflets lying upon his counter was mistaken by a cursory observer for "Paine's Book," although it was intended to have quite the opposite effect, and was probably by Mrs. Trimmer.¹ Religious intolerance was easily provoked, and religious feelings were easily played upon. While Sir Charles Wolseley was awaiting his trial for addressing the Radical meeting at Stockport, an attempt was made to trap him into sending copies of Paine's works to Knutsford. He outwitted the conspirators by sending a parcel of *Christian Observers* and *Evangelical Magazines*, and making the recipient show his real name. It was that of a clerk in the office of the very Clerk of the Court of Quarter Sessions who had signed Wolseley's indictment.²

Such was the intolerance that pursued many men of little more than local fame. Nearly every place of any importance had its own crusade, in addition to the widely reported trial of Carlile. But there remained one other trial of a man of nation-wide fame, and one which dragged on for many months. For the second time in his career Burdett was to be punished for championing the Freedom of the Press.

¹ John Turton, of Clapham, to "my dear friend," Henry Hobhouse.—H.O., 42. 199 (November 22, 1819); cf. Hammond, *Town Labourer*, p. 72 sq.

² H.O., 42. 197 (October 18, 1819); *Manchester Observer*, October 16, 1819.

4. "WESTMINSTER'S PRIDE AND ENGLAND'S GLORY."

There was one region in which the discontent of the working people does not seem to have led to any struggle for the Freedom of the Press; that was the hosiery district, where unrest was chronic. Perhaps the workers there were as ill-educated as they were ill-paid. Certainly there was no absence of the will to prosecute: one vicar at Nottingham was so anxious to undertake the prosecution of pamphlet-venders that the Home Office sent him a list of articles selected by the Attorney-General and told him to buy whatever one he considered most blasphemous or seditious.¹ Yet even had there been any general prosecution in those parts, it would have been overshadowed by the proceedings begun at Leicester against Sir Francis Burdett, who resided in that county. This case was as important in the history of seditious libel as was that of Carlile in the history of blasphemous libel. But while the conviction of Carlile was of far greater political importance, the conviction of Burdett was more interesting when viewed from the legal standpoint. "The law as to political libels," said a great Judge and historian, "has not been developed or altered in any way since the case of *R. v. Burdett*."²

Burdett was Member of Parliament for Westminster. He was a Reformer and was called a Radical, but he was much more moderate than Carlile or Wooler or Henry Hunt or even Place. Yet he was not exempt from prosecution. On reading the account of the Peterloo Tragedy he sent the Press an open letter—"To the Electors of Westminster":

On reading the newspapers this morning, having arrived late yesterday evening, I was filled with shame, grief, and indignation at the account of the blood spilt at Manchester.

This, then, is the answer of the boroughmongers to the petitioning People—this the practical proof of our standing in no need of Reform—these the practical blessings of our glorious boroughmonger domination—this the use of a standing army in time of peace. It seems our fathers were not such fools as some would make us believe in opposing the establishment of a standing army and sending King William's Dutch Guards out of the country. Yet would to Heaven they had been Dutchmen or Switzers or Hessians or Hanoverians, or anything rather than

¹ H.O., 41. 5, pp. 326, 366. Cf. H.O., 42. 159 (February 5, 1817).

² Stephen, *History of Criminal Law* (1883), ii. 376.

Englishmen, who had done such deeds. What, kill men unarmed, un-resisting, and, gracious God! women too, disfigured, maimed, cut down, and trampled on by Dragoons! Is this England? This a Christian land? A land of freedom? Can such things be, and pass by like a summer cloud unheeded? Forbid it, every drop of English blood in every vein that does not proclaim its owner Bastard.

Will the gentlemen of England support or wink at such proceedings? They have a great stake in this country, they hold estates, and they are bound in duty and in honour to consider them as retaining fees on the part of their country for upholding its Rights and Liberties; surely they will at length awake and find they have other duties to perform besides fattening bullocks and planting cabbages. They can never stand tamely by as lookers-on while bloody Neros rip open their mothers' womb. They must join the general voice, loudly demanding justice and redress, and head public meetings throughout the United Kingdom, to put a stop in its commencement to a reign of terror and of blood; to afford consolation, as far as it can be afforded, and legal redress, to the widows and orphans and mutilated victims of this unparalleled and barbarous outrage.

For this purpose I propose that a meeting should be called in Westminster which the gentlemen of the committee will arrange, and whose summons I will hold myself in readiness to attend. Whether the penalty of our meeting will be death by military execution I know not; but this I know, a man can die but once, and never better than in vindicating the Laws and Liberties of his country.

Excuse this hasty address. I can scarcely tell what I have written. It may be a libel, or the Attorney-General may call it so, just as he pleases. When the Seven Bishops were tried for libel, the army of James the Second, then encamped on Hounslow Heath for supporting arbitrary power, gave them three cheers on hearing of their acquittal. The King, startled at the noise, asked, "What's that?"—"Nothing, sir," was the answer, "but the soldiers shouting at the acquittal of the Seven Bishops."—"Do you call that Nothing?" said the misgiving tyrant, and shortly after abdicated the government. 'Tis true James could not inflict the torture on his soldiers, could not tear their living flesh from their bones with a cat-o'-nine-tails, could not flay them alive. Be this as it may, our duty is to meet, and England expects every man to do his duty.¹

A few days later Sir Francis heard that Lord Sidmouth had applied to the gentleman through whose hands the letter was transmitted to the newspapers to give up the author, intimating at the same time that a refusal would subject him and the editors of the newspapers to a ministerial prosecution. So Burdett informed Sidmouth that he *was* the author of the letter, and he,

¹ Dated Kirby Park, August 22, 1819.

moreover, assured him "that, although penn'd in a hurry and under the influence of strongly excited feelings, I can discover nothing in it, on a re-perusal, unbecoming the character of an honest man and an Englishman."¹

The Attorney-General's information charged against Burdett that,

being a seditious, malicious, and ill-disposed person, and unlawfully and maliciously devising and intending to raise and excite discontent, disaffection, and sedition among the liege subjects of our Lord the present King, and particularly among the soldiers . . . and to move and excite the liege subjects . . . to hatred and dislike of the Government of this Realm, and to insinuate and cause it to be believed by the liege subjects . . . that divers of the said liege subjects . . . had been inhumanly cut down, maimed, and killed by certain troops . . . in the county of Leicester unlawfully and maliciously did compose, write, and publish, and caused to be composed, written, and published, a certain scandalous, malicious, and seditious libel of and concerning the said troops of our said Lord the King.²

At the Leicester Assizes, Denman, a prominent Whig barrister, argued in defence that malice had not been proved, that publication in Leicestershire had not been proved, and that the allegations against the troops were true.³ Burdett was immediately found Guilty, in defiance of threatening letters which the jurors had received that morning.⁴ The verdict was questioned in the Court of King's Bench and argued learnedly there through several terms. Judge Best's original summing-up was upheld by the whole bench. As to the absence of malice, it was made clear that,

if it appeared that the contents of the paper were likely to excite sedition and disaffection, the defendant must be presumed to intend that which his act was likely to produce.⁵

As to publication in Leicestershire, which was popularly regarded as the slender thread on which the whole prosecution hung, to

¹ Dated Cottesbrook, August 28, 1819.—H.O., 42. 193.

² *Statesman* (evening), March 23, 1820.

³ Trial, March 23, 1820. Burdett hunted with the hounds the previous day.

⁴ "The jury by which the hon. bart. was tried (all honourable men, no doubt) was entirely—or at least with the exception of three or four—composed of members of a Pitt-club: so that their representative was tried by a Pitt-club jury for an offence against Mr. Pitt's principles."—Hobhouse in the chair at a Crown and Anchor meeting.—*The Times*, February 13, 1821. Thelwall's *Champion* went into mourning next Sunday. The Westminster elections were held next week, and the two libellers, Burdett and Hobhouse, topped the poll.

⁵ Stephen, *op. cit.*, ii. 369.

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the unfortunate neglect of more important pronouncements, Chief Justice Abbott ruled that the delivering of the letter into someone else's hands was an integral part of the offence of publication; that a letter delivered by a friend in Middlesex in an open envelope without seal or postmark must be presumed to have been delivered open to the friend in Leicestershire; but that, even if posted sealed, it could be held to have been published in both counties.¹ And did the truth of the criminal charges made in the libel matter? In mitigation of punishment the defendant might show an affidavit that he had read the statements in newspapers; but he was not to give evidence to prove that the allegations were true.

It is perfectly clear that if we receive those [affidavits] now offered, we must receive affidavits on the other side in contradiction, and then the Court must necessarily be placed in the situation of trying facts relating to the misconduct, real or supposed, of part of His Majesty's army, in their absence, and perhaps to their very great injury.²

This was the logical result of a criminal prosecution for causing disaffection, instead of something of the nature of a civil action for robbing the yeomanry of their reputation: the logical outcome of proceedings *King against Burdett* instead of *Yeomanry against Burdett*.

Perhaps the most important decision was that Mr. Justice Best had in no way exceeded his statutory powers when he laid down what he considered to be the Law of Libel and told the jury:

Libel is a question of law, and the Judge is the judge of the Law of Libel as in all other cases, the jury having the power of acting agreeably to his statement of the law or not.³

He had inquired into the nature both of the crime of libel and of the true Liberty of the Press:

The Liberty of the Press [he had said] is this: That you may communicate any information that you think proper to communicate by print: that you may point out *to the Government* their errors, and endeavour to convince them their system of policy is wrong and attended with disadvantage to the country, and that another system of politics would be attended with benefit. It is from such writings that the religion

¹ *State Trials* (N.S.), i. 147. *Annual Register* (1821), appendix to chronicle, pp. 899 sqq.

² Abbott, C.J., *State Trials*, i. 160.

³ Stephen, *ubi supra*.

of this country has been purified; it is by such writings that the Constitution has been brought to the perfection it now has. And God forbid I should utter a sentence to show that a man speaking with that respect which he ought to speak with of established institutions may not show that some reform may be necessary, or that the military ought not to be used in the manner in which they are. But *the question always is as to the manner.*

A question is made whether they show an intention to instruct by appealing to the judgement, or to irritate and excite to sedition, in the language of the Information; in other words, *whether they appeal to the sense or the passions.* You will apply your minds to the paper, and if you think the paper is written to communicate instructions, and with the proper respect for decency, and speaking as he ought of the transactions that have taken place, though there should be some little intemperance of expression, do not say it is a libel. But, on the other hand, if you find it begins with a statement which the writer cannot know to be true or false, if you find it states many things not correct, *if you find it an appeal to the passions of the lower orders of the people, and not having a tendency to inform those who can correct abuses, it is a libel.*¹

An attempt to punish all appeals to the natural and instinctive passions and feelings of mankind might have shown the Judge how very little there was in the world that was rational enough to stand above the storm. So sweeping a condemnation of a half of human nature meant that the law as he stated it was incapable of general and uniform application. He would call those whose passions were different from his own passionate, and those who felt as he felt, reasonable. Appeals to the people he would call passionate; appeals to the Government, reasonable. The "True Liberty of the Press" meant the liberty of petitioning and not the liberty of propaganda. One is reminded of the story of the Tsar, who visited the British Parliament and concluded that it could accomplish its work far more effectively if only the Opposition would convey their criticisms to the Government privately instead of making such a fuss in the eyes of the whole world. But Mr. Justice Best's Law of Libel was not simply against the washing of the Government's dirty linen in public. It was not simply against appeals to passion: nor was it simply against appeals to subjects instead of to Government. It was rather directed against appeals to the feelings of one special class of subjects, namely, the lower orders.

¹ Sir W. D. Best in *State Trials* (N.S.), i. 50-51.

The Bench concurred in Best's statement of the law, and, almost eighteen months after the letter was written, sentence was pronounced.¹ The great Whig barrister, Scarlett, spoke for Burdett, "in a voice almost inaudible from excess of emotion (the learned gentleman was affected, indeed, even to tears)."² He was fined £2,000, and was to be imprisoned three months in the custody of the marshal of King's Bench. The whole way from Westminster Hall to King's Bench Prison he was accompanied by a great number of persons, who continued cheering him. Then he was comfortably accommodated in the bedroom and sitting-room Cochrane had once occupied, and was there able to entertain the Opposition leaders to dinner twice a week.³ A crowded meeting passed resolutions in his favour, and against the infringement of the Liberty of the Press by the stretching of the idea of "publishing in Leicestershire."⁴ The Home Secretary signified to the Lord Chancellor His Majesty's pleasure that the name of Sir Francis Burdett be struck out of the Commission of the Peace for all counties in which it then stood.⁵

5. TRANSPORTATION FOR LIBEL.

Industrial distress and Parliamentary malrepresentation, the English language and cheap English periodicals, and the popular agitation for Radical Reform, were all assimilating Scotland to England. Both countries alike witnessed a struggle for the Freedom of the Press. But the trials there had a special importance through the remarkable influence of the Edinburgh lawyers among the more liberal section of the Whigs.

"The year 1819 closed, and the new one opened, amidst the popular disturbances called, gravely by some and jocularly by others, 'The Radical War.'"⁶ Edinburgh was in a state of panic, and even Whigs like Henry Cockburn joined an Armed Association. In such an atmosphere intolerance flourished, for the proceedings of the High Court of Justice attracted little attention this side of the Border, there were no competent shorthand

¹ February 8, 1821.

² *The Times*, February 9th.

³ *Ibid.*, *ubi supra*.

⁴ *Ibid.*, February 13th.

⁵ H.O., 41. 6, p. 417.

⁶ H. Cockburn, *Memorials of his Time*, written 1821-30. (1909 ed.), p. 342.

writers to take down the proceedings,¹ and the choice of a Scottish jury was by no means above suspicion.

Two of the first recorded victims were an Andrew Marshall and his wife.² He had been an extensive vender of political publications for the last three years without any interruption. In the middle of December 1819, when he returned home in the evening, after distributing the publications of the day in Glasgow and its vicinity, he found that not only the whole of his stock-in-trade had been taken, as was the custom in Scottish libel proceedings, but also his private books and papers and his wife. Then he was taken to the gaol to join her. Bail was tendered for their appearance, and was accepted at the end of the week. They were indicted for circulating seditious and blasphemous pamphlets, especially numbers of Carline's *Republican* and Wooler's *Black Dwarf*. A month later, however, when the date fixed for their trial arrived, the Court had to pronounce in their absence the sentence of fugitation or outlawry. Because of the existence of the Law of Seditious Libel the defendants and their sureties had both been punished, though neither had been tried; the defendants had at least escaped with their lives. Another couple who lived in the Grassmarket at Edinburgh were similarly accused of sedition in having circulated the *Black Dwarf*, and they likewise flitted.

These were not the only victims of a savage law. George Kinloch, laird of Kinloch, took the chair at a Reform meeting at Dundee, "composed of the lower orders of the people," and he afterwards published the address, in which he said that Parliament ought to be radically reformed, that Sidmouth and the soldiers ought to be brought to justice, and that the existing system of representation only nominally represented the people and was the cause of their miseries. He was prosecuted, and engaged the Edinburgh reviewers, Jeffrey and Cockburn, as counsel.³ What did they think of the case?

Although parts of this vulgar harangue might have been explained away or apologized for [said Cockburn], we were clear that enough of

¹ G. Omond, *Lord Advocates of Scotland*, ii. 261 sq., quoting Rae to Hobhouse, June 23, 1820. ² *Rep.*, December 31, 1819, January 14, 1820.

³ H. Cockburn, *Examination of the Trials for Sedition which have hitherto occurred in Scotland* (1888), ii. 204 sqq. This prosecution was not reported to Parliament. Kinloch was M.P. for Dundee in the Reformed Parliament. His address does not appear to be in the British Museum.

sedition remained to make it certain that there would, and proper that there should, be a conviction; and that a verdict of Guilty would be followed by a long transportation.

Kinloch withdrew to the Continent as the only way of escaping that fate, and in pronouncing the sentence of outlawry upon him in his absence the Lord Justice-Clerk, not content with sentencing this gentleman, went out of his way to state to the Crown counsel that the Court hoped special care would be taken to secure the accused and bring him to justice.¹

At Glasgow one Gilbert Macleod edited, printed, and published cheaply *The Spirit of the Union*. The Lord Advocate complained of an article in it containing improper observations on the Kinloch case. These observations did not refer to any depending proceedings, and Macleod wrote the article in the palliating circumstance of a child's death; but the High Court decided in the presence of Lord Erskine, and contrary to Cockburn's contentions, that it was competent to try this Contempt summarily, and that Macleod was guilty of contempt of court, although his comment was not on the Court, but only on its proceedings as reported in another paper. He was imprisoned for four months, and security was demanded for three years' good behaviour.²

It was not difficult to find a Ministerial paper which had similarly published improper observations on Macleod while he was under indictment. So Macleod complained against the editor of the *Edinburgh Correspondent* and against the compositor who happened to have written the article: one was imprisoned and the other fined. It was necessary, in Cockburn's words,

to show the Court what work it would have to do if, in times of great excitement, every deviation from correct propriety, in the discussion of political trials, was to be brought to a strict account.³

Worse was in store for Gilbert Macleod. His contempt of court had occurred in the ninth number of the *Spirit of the Union*. The Lord Advocate, Sir William Rae, whose father had been one of the Lords of Justiciary who tried the political martyrs of 1794,

¹ Cockburn, *Examination*, ii. ; Omond, *op. cit.*, 257.

² John Borthwick, *Treatise on the Law of Libel and Slander as applied in Scotland*, pp. 124 sqq. Cockburn, *Examination*, ii. 207 sq.; *Scotsman*, January 15, 1820.

³ Cockburn, *Examination*, ii. 208.

instituted a regular prosecution against the prisoner specifying seven seditious acts consisting of seven numbers of his journal.¹ In contemptuous and exaggerated language he had given vent to the usual Radical argument that the prevalent distress was due to the Government, and that Radical Reform was therefore necessary. He had taken from another paper the idea that taxes ought not to be paid. He had thrown out one novel suggestion that all who joined the yeomanry should be publicly named and watched. Macleod was the editor and publisher of the paper, and he printed over eleven hundred each week at another man's press; but he was not proved to have been the author of the articles in question. On the contrary, the most objectionable articles were reprints from unprosecuted newspapers. In fact, Macleod's opinions were quite possibly those of the majority of the nation. Moreover his character was excellent, and his manner quiet and modest. The worst thing that could be said against him was that he was a regular member of a Unitarian congregation. Technical objections to his indictment were repelled, and at his trial he was found Guilty; but the jury "unanimously recommended him to the lenity of the Court."² Macleod's counsel were prepared to plead in mitigation of that lenity.³ Moncrieff argued in vain that the offence proved was not real sedition or actual commotion, but simply verbal sedition or "leasing-making," the punishment for which was limited to fine, imprisonment, or banishment by a restraining statute of 1703, and no more extended to transportation than to capital punishment; he challenged even the legality of the one such sentence that had previously been passed for verbal sedition: a single circuit judgement in the famous case of the King against Palmer, twenty-five years before, could not bind the High Court. Jeffrey marshalled an array of plain and simple facts: he showed the difficulty of separating sedition from ardent political discussions, with the natural consequence that

¹ On Sir William Rae, see Omond, *op. cit.*, ii. 286.

² Objections heard, February 14, 18, 1820.—*Scotsman* (February 19th) Trial, February 23rd.—Cockburn, *ubi supra*, though he was not himself present; *Scotsman* (February 26th), though even this was not complete: "As an injunction against publishing the reports of the proceedings was intimated by the Court, and as we are not sure of the extent to which it was meant to be carried, we consider it to be not only more prudent but more respectful to postpone the publication of any report in any of these cases until the whole be closed."—*Scotsman* (March 18th).

³ March 6th: *Scotsman* (March 11th). Cockburn was present.

it prevailed on all sides in times of tension, but died away in quieter times, unless the people were embittered by a severity that defeated its own ends and succeeded only in cutting a few victims off from their families, and transporting them in the hulks to the other side of the world for so great a length of time that they could have but little hope of ever returning home. Two days later the Court met for judgement. Lord Gillies, who had been counsel for the British Convention prisoners in 1794, recommended only the highest degree of imprisonment, though he admitted that the right of the Judges to interpret banishment as transportation had been established on the previous occasion. But all five other Lords of Justiciary agreed that to publish a Radical newspaper was to tempt the people to levy war against the King, and was almost high treason; that banishment could not be carried into effect without transportation; and that transportation, because of its horrors, was the only appropriate and suitable punishment for this crime. Lord Justice-Clerk Boyle declared that to have his name associated with the names of Braxfield and his colleagues in '94 was the highest honour of which he was ambitious.

So Gilbert Macleod, of Glasgow, was condemned to be transported for five years. Along with nearly two hundred other convicts he sailed for New South Wales in the autumn of that year, and he did not live to see his own people again.¹

The Whig lawyers strove to remove the differences between Scottish and English law, to abolish transportation for sedition, and to abolish the selection of juries by Judges.² The discussion about the proper punishment for seditious libel was brought to a crisis; but even then the whole question of criminal prosecutions for political libel was not yet discussed. The Edinburgh Bar was more merciful than the Edinburgh Bench; but Scottish Whigs were not yet any more tolerant than the Tories of either Kingdom.

6. A "MOCK TRIAL."

Richard Carlile early contracted the habit of stigmatizing all trials for blasphemous or seditious libels as "mock trials," partly because no breach whatever of Statute Law was charged, and

¹ H.O., II. 3, p. 380.

² Cockburn, *op. cit.*, ii. 219 sqq.

partly because of the conduct of some Judges on some occasions in forbidding part of a defendant's defence. The nearest approach, however, to a real mock trial was that of Thomas Davison. He was Carlile's best supporter, and so far as he could, without interference with Carlile's publications, he had struck out in the same line with her penny *Medusa* and twopenny *Cap of Liberty* and popular translations of the works of the French "philosophes."¹ In the autumn of 1819 a charge was trumped up against him and a penalty of £20, half of which went to a common informer, was inflicted on him by the Lord Mayor because he had some bills printed at someone else's press with his own name on as printer, and because he had an unlicensed press, though it was not used in printing the bills.²

Soon afterwards the Society for the Suppression of Vice had him indicted, not for issuing any of his own publications, but for retailing Carlile's *Deist* and *Republican*. The ninth number of the latter was the one chosen. It was published the week after Carlile's trial, while he was in the King's Bench Prison, and it contained a letter which, under those peculiar circumstances, had been inserted without much examination. The letter, signed J. B. Smith, of Peterborough, was to the effect that the Bible and Christianity must be rejected.³ For selling this three Birmingham men suffered thirty-two months' imprisonment, and Davison was prosecuted. Who the author was remained a complete mystery until four years later, when he revealed himself to be a travelling writing-master.⁴

It was not until a year after Carlile's conviction that Davison's case came on for trial before Mr. Justice Best (October 23, 1820).⁵ The defendant was without counsel. He told the Jury

¹ *Rep.*, v. 278.

² *Medusa* (October 30, 1819); H.O., 41. 4, 450 (August 10, 1819). The informer was named Prichard; so was the secretary of the Society for the Suppression of Vice.

³ "Before the People can be blest with and cordially receive a perfect Government and a pure and equitable code of laws, they must reject the Bible as being the word of the true God, and also totally disbelieve the divinity of Christ . . . for in that book the most atrocious murders are palliated, and in many instances considered as the very essence of the service of the true God."—*Rep.* (October 22, 1819).

⁴ *Rep.*, vii. 443, 603; viii. 768; x. 32. The British Museum has J. B. Smith, *Principles of Writing* (Newcastle-upon-Tyne, N.D.), a copy-book.

⁵ There are many different current accounts of this trial, and though they conflict, they find their way into the *Rep.*, iv. 352 sqq., 418 sqq.

that the question before them was simply a matter of opinion, and that opinions were as subject to fluctuation as were the decorations of a military uniform or the fantastical varieties of a Brighton pavilion. It was not a matter of law or of lawyers: it was notorious that no counsel at the Bar would do any more for a defendant in such a case than offer a sham sophistical defence, because of their dependence on and servile submission to the presiding Judge. The Judge rebuked him for making observations offensive to the character of persons not present in the Court, and reminded him of his power to inflict fine or imprisonment for contempt. "My lord, if you have your dungeon ready, I'll give you the key," retorted the defendant.¹ Thereupon Mr. Justice Best fined him £20.

Davison went on to say that those who declared Christianity to be part of the law of the land were a set of bigoted old women, and, as to the Bible,

the Deist considers this collection of tracts to contain sentiments, stories, and representations totally derogatory to the honour of a God, destructive to pure principles of morality, and opposed to the best interests of society.

"I cannot endure this," said the Judge in a passion. "Respect for the laws must be supported. They are treated with disrespect in my person. I will not sit in this place and hear the religion of the country scoffed at, and I fine you £40 more for that offence."

Resuming his defence Davison said that not only were the higher orders of society, including the whole Legislature, sceptics in matters of religion, but the nobility were blacklegs and the Bishops were infidels.² For this second slander on persons not present in Court Best increased the fines by another £40.

When the defendant had finished the Judge remitted the fines, because they had prevented a "deluge of blasphemy and slander," or because they could not be paid in money and would have had to be translated into imprisonment, or perhaps simply because he thought better of it.

Davison was found Guilty. Security of £500 in his own recognizances, and £100 in those of each of two sureties, was required

¹ There are at least six different versions of what Davison blurted out.

² Blackleg meant a gambler and swindler.

if he was to have the benefit of discharge on bail until his sentence. He could not provide so large a security, and was therefore committed to gaol. A month later he was sentenced to two years' imprisonment.¹

With the help of a young barrister named Henry Cooper he tried to obtain a new trial, but Chief Justice Abbott said in refusing it:

I should be wanting to myself and my feelings as well as my duty to others if I did not say that, in the view that I have taken of this case, it is most manifest that the defendant came into court with an express design to revile the Christian religion. It became the duty of the Judge to prevent him from so doing by the imposition of a fine when he found that remonstrance had not that effect.²

Yet in the first instance it happened to have been the legal profession, and not the Christian religion, that was reviled.

Denman, Whig as he was, presented a petition from Davison to the House of Commons, and said in so doing that such interruption of a defence was unprecedented even in the case of Prynne before the Star Chamber; the very first fine intimidated the defendant and prevented him from going on with his defence as he had planned it; it was therefore cheaper to let judgement go by default than to defend oneself; and those who were rich enough to retain counsel would have more freedom than a poor man defending himself. Creevey unwisely said that Best was a very intemperate Judge, and "the only person on the Bench whom he would call a political Judge"; "happily, however, the House knew that he was not infallible, for when he had a seat in it there was no party with which he had not acted." This petition was

¹ R. Helder, Davison's successor, published Helvetius, *Human Mind*, in 1½d. weekly numbers, "for the support of the wife and three children of Mr. Davison, who is now under a sentence of prosecution by Wilberforce's English Inquisition (1821)."

² *State Trials* (N.S.), i. 1366 sq. *The Right assumed by the Judges to fine a Defendant while making his Defence in Person—denied: being a shorthand report of the important legal argument of Henry Cooper, barrister, in King v. Davison, on moving for a new trial.* Preface by M. D. Hill (Hone, 1821). Cooper said: "I want no affidavit from the defendant that he was intimidated by these repeated fines, and his defence embarrassed by them. He *must* have been embarrassed by them, and the intimidation *must* have had that effect." "Since there have been bad Judges in past times, I have a right to conclude that there will be in future . . . and the good are not to be trusted with a power which may fall into the hands of the bad, and be used to the oppression and ruin of innocence and virtue."—*Scotsman* (July 21, 1821).

rejected unread.¹ So was another, signed by fifteen hundred inhabitants of London and Westminster.²

When a man was on trial for abusing the Liberty of the Press it was bad policy to curtail his Freedom of Speech: it antagonized him and all who were like him, so that they felt they had no hope of fair play, and would therefore gain nothing by decency and moderation. The more ridiculous and irrelevant the tirades indulged in by the defendant, the more sure did his conviction by the Jury become. A Judge who risked the dignity of the Bench in an altercation with a defendant or his counsel might at any time meet his match, as Ellenborough had done in Hone, and as Best was yet to do.

¹ *Hansard*, iv. 918 sqq. *Morning Chronicle* headed division list: "List of Minority of 37 who voted . . . for hearing the petition of Thomas Davison read before it was rejected, and against Lord Castlereagh's admonition to the people of England not to trouble and take up the time of the House of Commons with any more of their petitions."—*Ibid.*, 1162 sq.

² *Ibid.*, 1132 sq.

CHAPTER FOUR

THE STRUGGLE IN PARLIAMENT, 1819

1. THE LAST PARLIAMENT OF THE REGENCY.
2. THE "SIX ACTS" AND THE PRESS.
3. THE WHIG OPPOSITION.
4. THE RESULTS OF THE NEW LEGISLATION.

1. THE LAST PARLIAMENT OF THE REGENCY.

THE old law of Criminal Libel, and the old press-laws that were being administered in the Courts, were not accepted as satisfactory by anyone who had anything to do with them in any capacity. Therefore, while they, with all their imperfections, were being enforced throughout the country, Parliament was called to pass new laws in order to uphold the old Constitution.

Lord Chancellor Eldon had been listening in London to news of the meetings and marchings that filled the long summer days, reading with astonishment and perplexity the reports of the mock election at Birmingham and of the way a great Lancashire crowd had been dispersed by the magistracy with the help of the military. On the whole he "thought that the magistrates had been remiss rather than over-active, and had neglected to take notice of many seditious and blasphemous publications which ought to have been noticed."¹ Ministers seemed even more remiss: over half of them were abroad in different parts of the Continent; the six who remained at home met daily, but could resolve on nothing, as the law seemed inapplicable to the existing circumstances.

"I am as convinced as I am of my existence," wrote the Lord Chancellor, "that if Parliament don't *forthwith* assemble there is nothing that can be done but to let these meetings take place, reading the Riot Act if there be a Riot at any of them. Prosecutions for *sedition* spoken at them we have now plenty on foot—and they may come to trial nine months hence. They are not worth a straw; and blamed as I was in 1794 for prosecuting for *High*

¹ *Hansard*, xli. 39.

Treason, all are now convinced here that *that* species of prosecution can alone be of any use. I think, however, that it won't be attempted: the case is as large and as complicated as mine was in 1794, and nobody has the spirit to attempt it."¹

He saw, as he had always seen, that prosecutions for sedition did not go to the root of the matter. They were half-measures of persecution and not of extermination; they resulted in a spasmodic cropping of overgrown weeds, but were useless for their systematic uprooting and eradication.

Their legal advisers seem to have persuaded the Government that they were more likely to obtain convictions for sedition than for treason.² So the rasher half of Eldon's proposals was dropped. Not so the proposal for new laws; for the Home Secretary had been convinced that the Press was "at present a most malignant and formidable enemy to the Constitution to which it owed its freedom," and "that the laws ought to be strengthened and the military force of the country augmented without delay," at a time when other ministers preferred "to wait and see—a determination, believe me, wholly unsuited to the exigencies of the present moment."³ He was supported by the Regent, who was "without apprehension of the result, provided your Lordship, in conjunction with the Law-officers of the Government, devise some system calculated to repress the publications circulated throughout all the manufacturing districts, and to which His Royal Highness ascribes much of the unpleasant state of the country."⁴

Summer had changed to autumn, platform and Press were louder than ever in complaint against the Government; ministers were once more back home; and Parliament was called for November 23rd, at the request of Eldon and Sidmouth.⁵

The Prime Minister was not quite sure of the advisability of an autumn sitting; but he, too, wished Parliament to consider "what measures could be adopted for averting the evils threatened . . . by the outrageous licentiousness of the Press."⁶

¹ Letter to his brother, Sir Wm. Scott. Horace Twiss, *Life of Lord Chancellor Eldon*, ii. 337 (there dated August 1819).

² Sidmouth to Eldon, quoted, Pellew, *Life of Lord Sidmouth*, 284 sq.

³ Pellew, *Life of Lord Sidmouth*, 283; and letter from Sidmouth to Eldon, quoted by John Campbell, *Lives of the Lord Chancellors*, ix. 393.

⁴ H.R.H. to Sidmouth, in Pellew, *op. cit.*, p. 283 sq. ⁵ *Ibid.*, 282.

⁶ Liverpool to Canning (September 23, 1819), in C. D. Yonge, *Life and Administration of Robert Banks Jenkinson, Second Earl of Liverpool*, ii. 411.

At the opening of the session the Prince Regent's speech called on Members of Parliament and County Justices to do all in their power to enforce the principles of religion and subordination among his subjects:

Upon the loyalty of the great body of the people I have the most confident reliance: but it will require your utmost vigilance and exertion to check the dissemination of the doctrines of treason and impiety, and to impress upon the minds of all classes of His Majesty's subjects that it is from the cultivation of the principles of religion, and from a just subordination to lawful authority, that we can alone expect the continuance of that Divine favour and protection which have hitherto been so signally experienced in this Kingdom.

It was most unwise to put such strongly Evangelical language in the mouth of such a prince. William Hone immediately parodied it in his popular *Man in the Moon, a Speech from the Throne to the Senate of Lunataria*, with excellent woodcuts by young George Cruikshank, who was now employed for the first time as a political satirist:

My L—rds and G—tl—n, I grieve to say
That poor Old Dad
Is just as—bad
As when I met you here the other day.
'Tis pity that these cursed State Affairs
Should take you from your pheasants and your hares
Just now;
But lo!
Conspiracy and Treason are abroad!
Those imps of darkness, gender'd in the wombs
Of spinning-jennies, winding-wheels, and looms,
In Lunashire—
O Lord!
My L—ds and G—tl—n, we've much to fear!
Reform, Reform, the swinish rabble cry—
Meaning of course rebellion, blood, and riot—
Audacious rascals! you, my Lords, and I,
Know 'tis their duty to be starved in quiet. . . .
I've given orders for a lot of Letters
From these seditious scribbling scoundrels' betters . . .
To *lie* for your instruction
Upon the table,
From which said premisses you'll soon be able
To make a fair deduction

That some decisive measures must be taken
 Without delay
 To quell the Radicals and save our bacon. . . .
 The body of the people, I do think,
 Are loyal still,
 But pray,
 My L—ds and G—tl—n, don't shrink
 From exercising all your care and skill
 Here and at home *to check the circulation*
 OF LITTLE BOOKS
 Whose very looks—
 Vile two-p'ny trash—bespeak abomination.
 Oh! they are full of blasphemies and libels,
 And people read them oftener than their Bibles! . . .
 Go and be planning,
 Within your virtuous minds, what best will answer
 To save *our* morals from this public cancer;
 Go and impress, my friends, upon all classes,
 From sleek-faced swindlers down to half-starved asses,
 That from religious principles alone
 (Don't be such d—d fools as to blab your own)—
 Temperance, chasteness, conjugal attention,
 With other virtues that I need not mention,
 And from subordination and respect
 To every knave in robes of office decked—
 Can they expect to gain Divine protection
 And save their sinful bodies from dissection!

High above all, illuminating the Lunar Senate like the Sun of Righteousness, Cruikshank set the Hand Press, and he portrayed the Holy Alliance dancing around the burning figure of Liberty set on another printing-press, and ministers murdering the Lady and enchaining her great instrument.

The great parodist and the still greater cartoonist produced another shilling satire of tremendous popularity, *The Political House that Jack built*.¹ It deliberately invited prosecution, though it was too bold a jingle for any Government to have read in any Court of Law.² The frontispiece showed a balance with the pen outweighing the sword and ex-officio informations of the Waterloo-

¹ Fifty editions before the end of 1820. Altogether 100,000 are said to have been sold.—F. G. Stephens, *George Cruikshank*, p. 25. It was replied to in

(1) *A Parody of . . .*

(2) *Constitutional House . . .*

(3) *Loyalist's House.*

² "A straw—thrown up to show which way the wind blows."—*Title-page.*

man. The Political House was built up step by step till it reached the standard of REFORM at the summit:

This WORD is the Watch-word—the talisman word
That the Waterloo-man's to crush with his sword. . . .
'Tis the terrible Word of Fear, night and morn,
To the GUILTY TRIO all covered with scorn:
First *the Doctor of Circular fame*,¹
A Driv'ller, a Bigot, a Knave without shame;
And next *Derry Down Triangle* by name,²
From the Land of Misrule and Half-hanging and Flame;
And then to *the Spouter of Froth by the hour*,³
The worthless colleague of their infamous power,
Who dubbed him "the Doctor" whom now he calls brother,
And to get at his place took a shot at the other.
This is the PEOPLE: all tattered and torn
Who curse the day wherein they were born
On account of taxation too great to be borne,
And pray for relief, from night to morn;
Who in vain petition in every form;
Who peaceably meeting to ask for Reform
Were sabred by Yeomanry Cavalry who
Were thank'd by THE MAN⁴ all shaven and shorn,
All covered with orders—and all forlorn,—
THE DANDY OF SIXTY who bows with a grace
And has *taste* in wigs, collars, cuirasses, and lace;
Who to tricksters and fools leaves the State and its treasure
And, when Britain's in tears, sails about at his pleasure;
Who spurned from his presence the Friends of his youth,
And now has not one who will tell him the Truth;
Who took to his counsels in evil hour
The friends to THE REASONS⁵ of Lawless Power
That back the PUBLIC INFORMER⁶ who
Would put down THE THING⁷ that in spite of new Acts
And attempts to restrain it by Soldiers or Tax,
Will *poison* the VERMIN⁸
That plunder the WEALTH⁹
That lay in the HOUSE¹⁰
That Jack built.

¹ Lord Sidmouth, alluding to his circular letter of 1817 and his father's profession.

² Lord Castlereagh, M.P. for County Down and heir to the Marquis of Londonderry.

³ George Canning had fought a duel with Castlereagh, 1809.

⁴ H.R.H. the Prince Regent, once a friend of the Whigs.

⁵ The Regular Army.

⁷ A hand press.

⁹ Habeas Corpus, Bill of Rights, Magna Carta.

¹⁰ Standing on three pillars (King, Lords, Commons) surmounted by Britannia holding her Cap of Liberty. Jack is John Bull.

⁶ The Attorney-General with ex-officio informations.
⁸ Lawyer, tax-collector, soldier, etc.

If it was a crime to bring the Government into ridicule, Hone and Cruikshank were criminal libellers. Here was sedition; here was defamation. Yet this, the most widely circulated of all political libels, was untouchable. John and Leigh Hunt had spent two years in prison for saying no more than Hone said against the Prince Regent. But they had said it in a different way: they had used prose and they had indulged in rhetoric, whereas now a jury and an audience would be treated to a feast of merry rhymes and crude but clever cuts.

About the same time a mere prose pamphlet appeared, clothed in anonymity and entitled *A Trifling Mistake of Thomas Lord Erskine's Defence*. We cannot be quite sure who the author was; but it was probably Francis Place.¹ It declared that the borough-monger domination rested on military force and not on opinion: "What prevents the people from walking down to the House and pulling out the Members by the ears, locking up their doors, and flinging the key into the Thames?—Knightsbridge Barracks!"² Complaint was made of this in the House of Commons, the publisher was ordered to attend, and a Member then said that he had been instructed to say that John Cam Hobhouse acknowledged the authorship of it. It was accordingly resolved

that the said pamphlet is a scandalous libel, containing matter calculated to inflame the people into acts of violence against the Legislature and against this House in particular; and that it is a high contempt of the privileges and constitutional authority of the House;

next, that Hobhouse had been guilty of such contempt; and thirdly, that he be committed to Newgate, or at least that he should be found accommodation that lay legally within the walls of Newgate, as the prison was full and was no place for a gentleman.³ So Hobhouse spent the remainder of the session in Newgate for fathering a pamphlet which in all probability he did not write.⁴

¹ So Carlile always said, and Place did not deny it.—Graham Wallas, *Life of Francis Place*, p. 149 n., quoting an article by Carlile in the *Monthly Magazine* (May 1836), in Brit. Mus. Add. MSS. 35144, f. 343 (Place Autobiography), along with a covering letter from Carlile. Also *Rep.*, ii. 126.

² The last two words were usually omitted, thus completely destroying the argument and altering the sense of the passage quoted.

³ *Hansard*, xli. 1013 (December 10, 13, 1819).

⁴ In the British Museum there is a proof of a broadside by George Cruikshank showing Hobhouse twiddling his thumbs in Newgate. But it was suppressed, apparently because it reproduced the offensive passage from *A Trifling Mistake*.—G. S. Layard, in *Printseller* (September 1903), p. 377 sq.

Such was the fire of ridicule that greeted the autumn session of Parliament, and such the reaction of Members of the House of Commons in the case which lay most clearly within their own jurisdiction. The very name of Hone was a reminder of the acquittal and the subscription-list which had put an end to libel-trials in London for nearly two years.¹ There seemed to be great danger in the dawn of popular education which alone gave Radical publications their circulation.² One hundred and seventy years had passed since such pamphleteering had last been known, and all the Tories and most of the Whigs made ready to prevent such an innovation.

The late publications [as Eldon said] were quite a novelty in this country. When he was in office [as Attorney-General in 1794] he never heard of wagons filled with seditious papers in order to be distributed through every village, to be scattered over the highways, to be introduced into cottages. Such things were formerly unknown; but there was now scarcely a village in the Kingdom that had not its little shop in which nothing was sold but blasphemy and sedition.³

The name of Hone, like that of Carlile, suggested that inextricable confusion of blasphemy and sedition which seemed so portentous that it must have been due to the machinations of miscreants. "By no other means could a people which for fifty years had shown themselves to be the most moral and religious in the world be seduced into a conspiracy for overthrowing the Constitution of their country."⁴

In the House of Commons the seconder of the address spoke of the home invaded by sedition and the altar by blasphemy, and said it was high time that scoffing at the litany of the Church of England was made a statutory offence.⁵

The most popular London libels at the moment were laughing at Parliament itself, and Members could not but think of their own security, even though the Attorney-General spoke chiefly of the protection of the lower orders.⁶ "Their minds were assailed by seditious tracts, and if sedition was allowed to go on they would write down any Government on earth," said one lord.⁷ Another said he had in his pocket a paper which advocated "an exchange of poverty for property," "a reform by which noble lords would

¹ *Hansard*, xli. 743 (Liverpool), 1431 sqq. (Gifford).

² *Ibid.*, 1414, 131, 718 (Ellenborough); 739 (Liverpool); 1526 (Bankes).

³ *Ibid.* (December 27th).

⁴ *Ibid.*, loc. cit.

⁵ Edward Cust, *ibid.*, 66.

⁶ *Ibid.*, 1432.

⁷ Lord Lifford, *ibid.*, 37.

not remain in possession of their estates three days after it was carried out."¹

With great exaggeration Lord Sidmouth said: "It was well known that a conspiracy existed for the subversion of the Constitution and of the rights of property. . . . Among the means adopted for the accomplishment of this end . . . the Press was one of the principal."²

The established religion seemed to be in as much danger as the Constitution. The Bishop of Llandaff declared that, unlike the reasoned arguments on infidelity which were addressed to the educated classes during the eighteenth century, the anti-Christian writings of the nineteenth century were too unreasonable to be suppressed by anything less than the terrors of the law.³

Little wonder that Parliament thought the Constitution was in danger when it was laughed at under its very nose by subjects who felt that the Government was not of their choosing and that they were not represented in the representative assembly. Parliament sat for six weeks, but was not well attended. The House of Commons had no recess for Christmas, which fell on a Saturday. Important measures dealing with the agitation for Reform were introduced on November 29th and received the Regent's assent by December 30th, and Members were free to hurry home in time for the Epiphany Quarter Sessions in their own counties.

We must now consider these famous Acts passed by the short, scared, and savage Parliament, and the opposition accorded them in both Houses.

2. THE "SIX ACTS" AND THE PRESS.⁴

The famous Six Acts of repression, passed while Lord Castle-reagh was Leader of the House of Commons, Lord Eldon on the Woolsack, and Lord Sidmouth at the Home Office, were an attempt made by these three men and their Parliamentary sup-

¹ Duke of Atholl, *Hansard*, xli. 36.

² *Ibid.*, 343 sq.

³ *Ibid.*, 988. "Made a most furious, most malignant, and most priestly speech."—"Very villainous."—Place in Brit. Mus. Add. MSS. 36628, f. 28. (Notes on the Savage Parliament.)

⁴ The Six Acts probably derived their title from the official *Abstract of Six Acts of Parliament* (1820).

porters, all of them strongly opposed to the idea of democracy, to adjust the Law of the Constitution to the new circumstances produced by the Industrial and Educational Revolutions.

Two of the Government Bills curtailed the two outworn rights of military training, and of indefinitely postponing trial in cases of misdemeanour.¹ Two others were local and temporary, empowering magistrates to search for arms for the next two years, and to license or disperse public meetings and lectures for the next five.² The remaining two concerned the Press: one, for preventing and punishing seditious and blasphemous libels, is still on the statute-book after being shorn by the repeal of certain sections that had never been enforced; the sixth, for increasing the price of the cheap weeklies and for regulating the production of all periodicals, is the only one that has been completely repealed.³

The *Act for the more effectual prevention and punishment of Blasphemous and Seditious Libels* (60 Geo. III. c. 8), commonly called the *Blasphemous and Seditious Libels Act*, made no alteration in the Common Law of Libel, and made no attempt whatever to define that law. The preamble, however, did contain an important amendment suggested by Lord Ellenborough, the son of the late Lord Chief Justice and later the Governor-General of India; this gave a rough reminder of what a seditious libel was, explaining it as a publication tending to bring into hatred or contempt the King or the Government and Constitution of the Kingdom as by law established, or either House of Parliament; or tending to excite subjects to attempt the alteration of any matter in Church or State as by law established otherwise than by lawful means. Apart from this the Act made certain provisions for the more effective administration of the old law and for frightening would-be offenders.

The administrative improvements empowered any Judges, before whom a libeller was convicted, to have his copies of the libel seized and detained in safe custody, even if they had been put into the possession of another person for the use of the first. Moreover, magistrates and constables were empowered to search for copies of the libel belonging to the convicted person, in whose possession soever they were sworn to be. And they were permitted to enter such premises by force if they were not admitted within

¹ 60 Geo. III. c. 1, 4.

² 60 Geo. III. c. 2, 6.

³ 60 Geo. III. c. 8, 9.

a reasonable time. If judgement were arrested or reversed, the libels so seized should be returned; otherwise they should be disposed of as the Court should direct.

Some such provisions as these were necessary if there were to be an effective Law of Criminal Libel. But as much cannot be said for the threats held out against second offenders in the hope of deterring them from a first offence. They might, at the direction of the Court, be banished from the British Empire for such term of years as the Court should order. Persons not departing the Kingdom within thirty days after the pronouncing of the sentence of banishment might be conveyed to such foreign country as the Ministers of the Crown should direct. Persons convicted of being at large within any part of the British Empire after forty days from the pronouncement of the sentence of banishment, or before the expiration of the term of their banishment, should be transported to such place as should be appointed by the King for not more than fourteen years. In other words, a libeller was made liable to banishment outside the Empire for a second offence, or to transportation inside the Empire like a felon if not rich enough to go into banishment.

Even more important was the *Publications Act*, or *Act to subject certain Publications to the Duties upon Newspapers, and to make other Regulations for restraining the Abuses arising from the Publication of Blasphemous and Seditious Libels* (60 Geo. III. c. 9). This was directed against the cheap weeklies. In the preamble it was declared that "pamphlets and printed papers containing observations upon public events and occurrences, tending to excite hatred and contempt of the Government and Constitution of these realms as by law established, and also vilifying our holy religion, have lately been published in great numbers and at very small prices: and it is expedient that the same should be restrained."

It enacted that all pamphlets and papers should be deemed and taken to be newspapers within the true intent and meaning of Pitt's Newspaper Act¹ and the various Stamp Duties Acts:²

1. If they contained any public news, intelligence, or occurrences, or any remarks or observations thereon or upon any matter in Church or State;
2. If printed in any part of the United Kingdom for sale, and pub-

¹ 38 Geo. III. c. 78.

² 55 Geo. III. cc. 80, 185; and 56 Geo. III. c. 56. *Vide supra*, Ch. I, sect. 3.

lished periodically or in parts or numbers, at intervals not exceeding twenty-six days between the publication of any two such pamphlets or papers, parts, or numbers;

3. Where any of the said pamphlets or papers, parts or numbers, respectively shall *not exceed two sheets* or shall be published *for sale for a less sum than sixpence* exclusive of the duty imposed by this Act.

Then, so as to leave no loophole for evasion, the minimum size of a sheet of paper was fixed (21×17); covers, blank leaves, and advertisements were all excluded from the reckoning of the minimum two and a quarter sheets of a cheap periodical "pamphlet"; such publications, issued at intervals exceeding twenty-six days, were to be published around the beginning of the month; the price and the date of publication were to be printed on each cheap periodical pamphlet, and anyone retailing one for less than sixpence was liable to a penalty of £20.

But this was not merely an Act for increasing the price of periodical pamphlets; it was also a periodical-producers' Liability Act, establishing compulsory insurance against the ever-present risk of conviction for criminal libel. Every person printing or publishing a periodical was to enter into recognizances before a Baron of the Exchequer at London, Westminster, Edinburgh, or Dublin, or enter into a bond before a Justice of the Peace in the country, along with two or three sufficient sureties, in the sum of £300 if the periodical was published in or around London, or £200 if published elsewhere, as a guarantee for the payment of "every such fine or penalty as may at any time be imposed upon or adjudged against him or her, by reason of any conviction for printing or publishing any blasphemous or seditious libel, at any time after entering into such recognizance or executing such bond."

This was also an Act for increasing the discretionary powers of the country magistrates. Henceforward any Judge or Justice of the Peace before whom any person should be brought for the purpose of giving bail upon a charge of printing or publishing any blasphemous, seditious, or malicious libel might lawfully bind the person so charged to be "of good behaviour" during the continuance of such recognizances. The Act was to be administered by any two Justices of the Peace, and cases were not removable from their jurisdiction by writ of *certiorari*. Finally, purely

devotional or commercial periodicals were exempted from the rules of minimum size and price; and works more than two years old might be reissued in parts or numbers, provided they had not first been published in parts or numbers as the *Black Book* had been.

Such is the collection of regulations in what is often very inadequately and superficially called the Newspaper Stamp Duty Act. True, it did extend the Newspaper Duty from news to criticism; but as an alternative it increased the size and price of weeklies which continued to pay the light pamphlet-tax. It fixed a minimum frequency for monthlies which escaped from both these regulations. It prevented any person from publishing periodicals unless he could find sureties to the tune of several hundred pounds; and its augmentation of the power of magistrates to punish persons before trial referred to all publications suspected of libel and was not confined to periodicals.

There was a third Act of considerable importance to the Press. That was the *Act to prevent Delay in the Administration of Justice in Cases of Misdemeanour* (60 Geo. III. c. 4), commonly called the *Misdemeanours Traverse Act*, which expedited trials for blasphemous and seditious libel by bringing misdemeanours and bailable offences into line with treason, felony, and murder. Defendants were henceforward to plead or demur when called upon, instead of imparling or traversing till next term. Great importance was attached to this improvement in procedure. The Prime Minister, for instance, said that "in cases of libel the offence might be repeated day after day and hour after hour before the party accused could be brought to trial. All this mischief would be prevented by a more seasonable prosecution."¹ By this Act the defendant lost his right of delaying the pleading and the trial; but as the Bill stood originally the Attorney-General would have been left at liberty to keep any number of ex-officio informations hanging over an accused person's head for life, and the balance would have been unfairly weighted against the accused, if Lord Holland had not secured the adoption of an amendment under which prosecutions instituted by the Attorney-General were to be brought to trial within twelve months or not at all. Henceforward also, in

¹ *Hansard*, xli. 685 (Liverpool); similarly 691 (Holland), 684 (Erskine), 681 (Grosvenor), 1009 (Eldon), 1178 (Brougham, Tierney), 1302 (Denman).

prosecutions instituted by the Attorney-General, the Crown was to bear the cost of supplying the party prosecuted with a copy of the indictment or information. This Bill, thus amended, had the warm support of the Whigs. How far the other Bills were opposed by them must now be considered.

3. THE WHIG OPPOSITION.

The Whigs opposed the Six Acts of the Tory Ministers because they were the Opposition and because they were opposed to change. A few, including Grey and Holland, were tinged with liberalism. Some thought that rationalist works ought to be stamped out, and some that Radical publications should likewise be extinguished. Nearly all regretted there had not been more prosecutions. One of the greatest of them sketched an ideal Coercive Act, such as he would himself have introduced; and others voted for the Government Bills, one of which had been suggested by one of themselves.

Earl Grey, the destined pilot of the first Reform Bill, led the opposition to the earlier stages of the new Bills, four of which, and among them the Libels Bill, were launched in the House of Lords. But as yet he criticized the defective policy of the Ministry, to the neglect of the defects in the Constitution.¹ He saw that the situation was critical, but he saw a cure in conciliation and, above all, in the reduction of the enormous public expenditure, to which he attributed the distress of the masses.² He saw, too, that "the safety of the State could only be found in the protection of the liberties of the people. Whatever was destructive of the latter was destructive of the former."

After the second reading of the Libels Bill only fifteen peers signed his protest. Among them was Lord Holland, the nephew and political heir of Charles James Fox. On that occasion Grey said that he himself was too old, and his health was too bad, for him to "ride on the whirlwind and direct the storm" in the event of popular commotion; so the leadership of the Opposition in the later stages of that Bill often devolved upon Lord Holland.³

¹ "Driveller"—Place, *ubi supra*, ff. 13, 17, 22.

² *The Republican* agreed, December 17, 1819.

³ *Hansard*, xli. 494 (November 30th).

Both saw that, unless the policy of Ministers was very unwise, criminal libels were not numerous enough to be dangerous. Holland referred to the fundamental religiousness of the English people, including the lower classes and Dissenters with their newly built places of worship.¹ Grey declared they were "a moral people" more likely to be deceived into following a fanatic zealot than an atheist or unbeliever.² All kinds of publications had increased of recent years, and though blasphemous libels were now more numerous, their proportion had not become greater.³ "Only three thousand copies of the *Age of Reason* had been shown to have been circulated, whilst printing in all its branches had grown to an uncalculable extent, and particularly in tracts periodically circulated by the zeal of sincere supporters of the Christian faith"; perhaps 50,000 copies of Methodist and Evangelical publications were circulated every month, and "many others of the same character were so widely circulated as to make religious enthusiasm rather than infidelity the national characteristic."⁴

On taking the details of the Libels Bill the liberal-minded Whig peers concentrated mainly on the proposed sentence of transportation for the second offence, just as the Whig lawyers at Edinburgh were soon to do, and they obtained the substitution of banishment, which was equally unsatisfactory, except when the criminal did not take himself into exile.

Transportation was the application of the punishment of felony to the vaguest, most variable, and least definite of misdemeanours.⁵ Another open letter on the conduct of Ministers might send a man of rank and talent, like Sir Francis Burdett, on a convict ship, along with common felons, to Botany Bay.⁶ Few writers and other public men of the last hundred and fifty years would have had any protection against banishment after their parties had fallen from power.⁷ Newsvenders would be exposed to unmerited punishment if they did not critically examine all they had to sell,⁸ and this punishment would be placed in the discretion of the Court.⁹ As a result juries would be less likely to convict

¹ *Hansard*, xli. 720 (December 6th).

² Holland, *ibid.*, 960 (December 9th).

³ *Ibid.*, 982 (December 10th).

⁴ *Ibid.*, 745 (Carnarvon), 716 (Lansdowne).

⁵ *Ibid.*, 723 (Holland).

⁶ *Ibid.*, 722 (Holland), 731 (Grey).

⁷ *Ibid.*, 733 (December 6th).

⁸ *Ibid.*, 713 (Lansdowne).

⁹ *Ibid.*, 724 (Holland).

even for a first offence, for fear it should lead to eventual exile.¹ So the effects of the Bill were uncertain, and Holland's argument went to prove "that during quiet times this Bill was not sufficient to suppress the crime to which it was applicable; and that in times of deep agitation it was likely to furnish a weapon of all-powerful persecution and to turn the sword of justice into the dagger of the assassin."² Again, at the report stage Holland tried to prevent "the introduction of a new punishment for libel, and one which was unknown, for that offence, in any part of Europe"; banishment was a principle unknown to English law; to drive malcontents into the arms of foreign Powers was unwise; and the House had only recently refused to extend the penalty of banishment from Scotland to that of banishment from all His Majesty's dominions.³ He tried, also, to prevent the punishment of persons only accidentally connected with the publication of libels who did not act knowingly, wilfully, and maliciously.⁴

The arguments against banishment were of very real importance, and it may well have been from the speeches made, and the protests signed by Holland and his colleagues, that the English Judges and Law-officers learnt the unexpected wisdom which they were to display during the coming years.

What was the attitude of Lord Erskine, the most famous Whig lawyer in the Upper House? Like Holland, he opposed Ellenborough's amendment, explanatory of sedition, for even Burke would have been illegally bringing established institutions into contempt when he said, in advocating the most peaceful of economic reforms, "Kings are naturally fond of low company."⁶ And against the Publications Act he entered his protest in the journals,

because by the stamps . . . and . . . recognizances a discouragement amounting to almost a prohibition is thus suddenly aimed at a very large and often useful branch of trade, and because the great mass of British subjects have no surer means of being informed of what passes in Parliament and in the Courts of Justice, or of the general transactions of the world, than through cheap publications within their means of

¹ *Hansard*, xli. 715 (Lansdowne), 724 (Holland).

² *Ibid.*, 725 (Holland).

³ *Ibid.*, 961 sqq.

⁴ *Ibid.*, *loc cit.*

⁵ "The old crazy egotistical fellow."—Place, *ubi supra*, f. 24.

⁶ *Hansard*, xli. 967 (Erskine), 973 (Holland).

purchase; and I desire to express my dissent from that principle and opinion that the safety of the State and the happiness of the multitude in the laborious conditions of life may be best secured by their being kept in ignorance of political controversies and opinions.¹

This was the most democratic pronouncement made in Parliament by any man who was not a recognized Radical. Yet Erskine's views were in many respects more illiberal than those of the life-long aristocrats with their "quiet and gentlemanly scepticism."² His argument against transportation, for instance, was grounded on his fear of blasphemy and of the evil of sending forth "persons dangerously injurious to the country to a new colony, to poison the hearts and understandings of an infant State."³ He traced out his own path, and in so doing was true to his own past.⁴ He had defended Paine's seditious *Rights of Man*: he had prosecuted Paine's blasphemous *Age of Reason*. So now he tried to distinguish between the different kinds of criminal libel.

The prosecution of seditious libels he treated as bad policy: "Publications might be, and often had been, charged to be seditious which were virtuous, public-spirited, and useful—writings which the noble lords opposite might well think offensive, but which disinterested, honest men ought to approve." "There were many cases in which a subject had a perfect right to complain of proceedings of the executive Government, and even of Parliament itself."⁵ And he quoted Cromwell as saying, when he reversed the seizure of Harrington's *Oceana* as being a libel on all government, "If my Government be made to stand, it has nothing to fear from a paper shot." He saw clearly that political writings which might be useful were quite different from obscene publications, which were useless nuisances; but he proceeded to class blasphemous works with the obscene rather than with the seditious. He said that such pernicious publications ought to be put down; "nor was there the smallest difficulty in accomplishing it." "The Law-officers of the Crown had already the amplest means in their hands for the suppression of all injurious publications," as was clearly shown by the total suppression of obscene publications

¹ *Hansard*, xli. 591 sqq. ² Trevelyan, *op. cit.*, 161. ³ *Hansard*, xli. 966.

⁴ "His egotism on this, as it had on many occasions, completely led him astray."—Place, *ubi supra*.

⁵ He alluded to his defence of Stockdale, who had attacked the Commons for injustice to Warren Hastings.

undertaken and accomplished by a private society without the aid of the great resources of the Crown. On behalf of a similar society he had prosecuted the *Age of Reason* as warmly as he had defended the *Rights of Man* against the Attorney-General, and now he spoke, as he had lived, like some old Calvinist preaching freedom in politics but not in religion. Our present practice is the reverse of Erskine's: blasphemous libel has a little more freedom than seditious; but, on the whole, the two have tended to be confused, since man's critical powers demand the same freedom of judgement in respect of the established religion as in respect of other established institutions and opinions; moreover, a criticism of underlying spiritual conceptions naturally accompanies criticism of any social order or political system.

The chief stronghold of the Whigs was the illiberal argument that the old laws had not first been proved inadequate.¹ Erskine lashed the Government for not enforcing existing laws:

I have seen within a few days, not only in the shops of booksellers, but in others of all descriptions, a placard announcing for sale the *Mock Trial of Mr. Carlile* and in large letters, "Infamous Conduct of the Judge," whose lenity was carried throughout the trial to the utmost limits of indulgence.²

Surely, my lords, libels of this description should not pass unpunished; yet they are suffered to corrupt the public mind with impunity, whilst you are about to pass new statutes instead of carrying those you have into execution. It is this negligence which is the parent of offences. Execute the existing laws with promptitude and vigour and it will be quite unnecessary to enact transportation for a libel—a punishment unknown to the Constitution.³

Similarly, George Tierney, the Leader of the Opposition in the House of Commons:

As to the cheap publications, as they were called, no one viewed with greater disgust than he their effusions, as well on the subject of religion

¹ *Hansard*, xli. 351 (Grey), 428 (Lansdowne), 720 (Holland), 977 (Carnarvon), 1435 (Scarlett, Althorp).

"Prosecutions for libels had been too few. This is the common cant of all the Whigs. They talk themselves into a perfect familiarity with prosecution, and are silly enough to suppose they are making out a case against Ministers when they are only doing injury to the people. This is most miserable empty-headedness where it is not bad-heartedness."—Place, *ubi supra*, f. 28.

² Carlile said later that this was Sherwin's work, and that he disapproved of it and never accepted Sherwin's help again.

³ *Hansard*, xli. 448.

as in vilification of the best characters in the country; and his chief astonishment had arisen from observing that, for three or four years together, no attempt had been made to put a stop to them. . . . Could any man read but the tenth part of the cheap publications and not be persuaded that Grand Juries would have found True Bills, and Petty Juries verdicts of Guilty, upon their authors? If only the libels had been brought before juries, the old and recognized law would have been adequate to restrain the excesses of the Press.¹

On another occasion he raised no objection to the increased duties on political weeklies.²

In the triangular contest that had now been begun the official Opposition did not see the problem from the Radical standpoint. They were used to the old liberty as between Tory and Whig; but they had little tolerance towards the new freedom preached and practised by the deluded Radicals. And were not the more advanced elements undermining the old Whig influence? So Tierney attacked Ministers for not suppressing Radical publications when they injured the Whigs:

It was certainly impossible to conceive any set of gentlemen under less obligation to the Radicals than the Whigs were. True it was that Ministers came in for a share of abuse and disapproval; but it was mild and merciful compared with the castigation which their opponents received. . . . He was thoroughly convinced that, *if many of the seditious publications had not contained such violent vituperation of the Opposition, Government and their friends would have been much more active in putting an end to their circulations and punishing their authors.* There might be some madness in these effusions; but there was a great deal of method in it, and Ministers took care to avail themselves of it. They argued in this way: "If we do not do something against these pamphleteers we shall increase sedition, it is true; but if we put an end to them we shall let our enemies go scot-free. Therefore we will not be too severe with these seditious gentlemen in order that we may not be too merciful to the Whigs."³

Tierney lived up to his reputation as a debater, and he raised from the Opposition benches the first cheer of the first evening. He was their acknowledged leader. Brougham was still regarded as a free-lance; once he had almost become Burdett's colleague in the representation of Westminster City; yet he, too, attacked the Government by attacking the Press. At the close of a speech that ended at five in the morning,

¹ *Hansard*, xli. 407 sqq.

² *Ibid.*, 1506.

³ *Ibid.*, 74.

He lamented as much as any man the circulation of blasphemous and seditious publications, and he therefore rejoiced at the result of some recent trials. . . . The law there had been found sufficient to assert its own force; and he considered that, if sedition or treason existed, it would be also found strong enough to put them down. If it should not be so, he could only attribute it to the circumstance of its not having been hitherto administered with a steady hand. It was now too late to complain of the licentiousness of the Press . . . which he lamented as much as any man . . . but from a different cause; for it seemed to him as if *the abuse and licentiousness of the Press had been fostered in order to give some colourable ground for an attack on its liberty*. What he had to complain of, and did complain of, was that in the last three years, without an attempt at prosecution, a mass of the grossest and most criminal matter had been launched forth to the public with which ever society had been visited. He then quoted some inflammatory gems and asked: "*Who then were to blame, if the Press was licentious, but they who had not taken any steps to correct it by the proper application of those remedies which the laws prescribed?*"¹

The only trace of liberality in Brougham's public utterances was his defence of the much-maligned Union Schools which the Methodist working people in Stockport and Macclesfield supported with penny-a-week contributions, and where a blasphemous primer had turned out to be nothing worse than Mrs. Trimmer's spelling-book.² Pedagogy was the only kind of demagoguery with which this patron of the working classes sympathized, as his Benthamite friends now realized.³

So far we have considered the Whig defence of the old law against the new Bills in both Houses of Parliament. We have seen how some Whig lords, led by Grey, said very little about Press-prosecutions, and ascribed the prevailing unrest to economic

¹ *Hansard*, 227-28, and also *ibid.*, 1504.

² *Ibid.*, 1505, 1560 sq.

³ "Blundering fool."—"Against the Press! He fears it, he smarts under it, he cares not for the people."—"Kept calling out, why did not the Attorney-General prosecute? (Well done, lawyer. Ex Officios and packed Special Juries for ever and ever.)"—"Opposed the introduction of the Bill: after the decided reprobation he had passed upon the seditious and blasphemous libels which had emanated from the Press in the course of the last three years, he did not expect that he should be suspected of too great a leaning to them. (*Well done, hypocrite; you who are not a Christian yourself.*)"—"Wavering, protesting, detesting, abhorring, condemning, imploring, complaining, blundering, compromising, disapproving, floundering, drivelling—as usual."—"Had he not the evidence of his senses, he could not have believed that such licentiousness could have been tolerated for a moment' (and yet in private conversation he says just the reverse)."—Place, *ubi supra*, ff. 15, 16, 36.

causes. We have seen others attack the Government for not being more intolerant of popular Radical and Deistical writings. We have seen Lord Erskine stand up for almost complete political freedom while advocating the complete suppression of non-Christian publications. We come now to a Whig of quite a different type from any we have yet considered. That was James Mackintosh, and his great debate with George Canning was the most exciting oratorical contest during the passage of the new Bills. Mackintosh can hardly be regarded as in any sense a Liberal; he was rather a moderate of Cicero's school who had distinguished himself by using Burke's principles to vindicate the French Revolution against Burke's *Reflections*; and he had gained his great reputation not as a partisan or advocate, but as a philosophic lecturer at London and an impartial Judge at Bombay.¹ His attitude was even less liberal than that of Erskine, in that he did not deny the need of new measures of repression, and in that he supported prosecution not only for blasphemy, but also for certain classes of political writings. He tried to prevent the "infamous and flagitious Press," "the disgrace of the nation and the age," from being confused with the "honourable, well-conducted, and well-deserving Press"; he also distinguished two classes of political libel, repressing the hitherto unparalleled bad passions of the outcasts of the human race, who were encouraging atrocity and criminality, but permitting the warm ebullition of an ardent spirit occasioned by the clash of parties. So he proposed to confine the new law to the new mischief by enumerating those specific sorts of seditious libel to which it should apply, and by substituting this for the general explanation of seditious libel which had been inserted by the Lords.²

He believed that the offence of seditious libel was undefinable. It was a futile labour to attempt the definition of an offence which depended on circumstances, since words, which at one time might be considered innocent, might at another time and a few miles off be condemned as

¹ See an excellent sketch of his life and character by Sir James Scarlett in R. J. Mackintosh (son), *Memoirs*, ii. 275 sqq. It was Mackintosh who moved for the report 1819 (18), iv. 173, which showed that no ex-officio informations were filed in 1818.

² "Mackintosh would propose a clause in the Committee defining the crime to which the increased punishment should be applicable. He would so frame it that none but those who were actually and wilfully guilty (of a difference of opinion) should be punished—Rare Legislator."—Place, *ubi supra*, f. 36.

wicked and improper. The whole of the definition manifested a great inexperience in legislation, a great want of knowledge of human nature, a great unskilfulness in adapting laws to the particular circumstances of men. But positive instigation to the commission of crime was easily defined. It was at least easy to describe it in such terms that a jury of common honesty might at once see whether a person brought before them as an instigator to crime was innocent of such a charge or not. . . . Would his honourable and learned friend show him any clause in this Bill by which the penalty of banishment would apply to a man whose writings recommended assassination? . . . The preamble contained what it ought not to contain, and omitted that which ought to have formed part of it. He was arguing the possibility and the expediency of distinguishing instigation to crime from political libel. It was a gross error to confuse the two offences, and its effect would be doubly pernicious, since sometimes it would occasion the escape of those who deserved to suffer, and at others the severe punishment of men who ought to have been mildly treated. . . . Its severity would tend to abate the natural horror which men would otherwise feel against those who thus abused their abilities. . . . The liability to a severe punishment would save the ruffian; while the man who acted from honest views must suffer in his character, although acquitted, by having been classed with such a person. . . . Instead of strengthening the moral feelings of mankind, a measure proceeding on such a principle of confusion, by which crimes of various degrees were punished alike, tended to weaken them. . . . And what would be the result of such a state of things? Why, that only few convictions would follow prosecution; so that in point of fact more satisfaction would be gained to justice by subtracting a few cases from the operation of the law than could be obtained by including all cases under it.¹

He proposed to amend the preamble of the Libels Bill by substituting for Ellenborough's wide explanation of what was meant by seditious libel the following exact definition of a few selected evils:

[1] Any blasphemous libel; or [2] any seditious libel tending to excite His Majesty's subjects to do any act which, if done, would, by the existing law, be treason or felony; or [3] any libel in which it should be affirmed or maintained that His Majesty by and with the advice and consent of the Lords spiritual and temporal and Commons in Parliament assembled, has not, or ought not to have, full power and authority to make laws binding on His Majesty's subjects in all cases whatsoever.²

Now the second proposal may have been worthy of the great criminal-law reformer Mackintosh was: but the first maintained

¹ *Hansard*, xli. 1331 sqq. (December 23, 1819).

² *Ibid.*, 1541.

the taboo on criticizing Christianity, and the last extended that taboo to criticism of the sovereignty of an unrepresentative Parliament.¹ Then Mackintosh launched out into a long-remembered eulogy of the Gentlemen of the Newspaper Press, and especially James Perry, the proprietor of the Whig *Morning Chronicle*.

A new interest [he said] had arisen in the State which had imperceptibly acquired to itself consideration and power. It was a most wretched policy to try, if you can, to subdue this new interest, and, if you cannot, to keep it down as much as possible. . . . The House might irritate the Press—they might deprive themselves of the assistance of that powerful instrument—but no measures which it was possible to adopt could have the effect of preventing its continuing to be a source of emulument or preventing that emulument from continuing to attract men of talents to it. . . . This state of things depended on causes beyond the control of Parliament. They could no more control the order of things in society than they could control the planets in their courses. . . . The course of affairs had given a power to the conductors of the Press which could not be wrested from them. This power they might exasperate or they might conciliate, but not annihilate.²

It was of some importance that half the Periodical Press was thus praised. Of course, Canning neglected the argument in his eloquent reply. He refused to sacrifice himself and the institutions of his country to the despotism of a Press hurling its vengeance from the midst of clouds and darkness, especially when it acted with all the secrecy of a Venetian tribunal and struck with all the certainty of the Holy Inquisition. As to the amendment, to strike out the explanation that had been inserted would be to imitate by inference that what was thus omitted was not considered criminal.³ One Whig saw the oddity of another Whig helping to improve a Bill which many of them regarded as unconstitutional, and Brougham saw well enough that the acceptance of Mackintosh's specification of crimes would be no improvement unless the rest of the Bill were transformed.⁴

¹ "A parcel of nonsense, of no more real use than the clause itself."—"Jemmy would pass for a wise legislator, and yet he thinks such miserable expedients are useful, thinks indeed that they are general principles to be adopted in the government of a great nation. Legislator indeed!"—Place *ubi supra*, f. 37.

² *Hansard*, xli. 1542; "Lies"—Place, *ubi supra*.

³ "Canning gammoned Mackintosh."—Place, *ubi supra*.

⁴ *Hansard*, xli. 1542 (Folkestone), 1559 (Brougham).

While most of the Whigs were defending the existing law against innovation, and while Mackintosh was making a constructive effort to increase the effectiveness of the Libels Bill, one group of them were supporting the new Bills. Lord Grenville had been a Pittite during the Reign of Terror, but had had to leave the Government, as he was as liberal as Pitt towards the satisfaction of Roman Catholic claims. During the summer he had been joining in Oxford's heresy hunt.¹ In November he had written to the Prime Minister making the very suggestions on which the Libels Bill was based.² And now in a highly coloured speech he proclaimed that evil-minded men were endeavouring to plunge them into the unmeasurable calamities of civil discord, and that to their sovereign, to their country, to the British nation, and to the whole civilized world they were answerable for the preservation of their religion and morals, their laws and government; and to their peaceful and loyal fellow-subjects they owed the defence and security of their rights, properties, and lives.

To the deluded victims of these machinations we have also a duty to discharge—a duty of protection and kindness. We owe it to them, and it is the greatest of all benefits which can be conferred upon them, to rescue them, if it be still possible, from the seduction and treachery by which they are beset; and to remove from their paths and dwellings the snares unceasingly laid for their destruction.

He was struck by the resemblance of this picture to the bitter experience of France, which was first deluged with poisonous publications and then plunged into revolution, and he saw the true root and source of all danger in the spread of revolutionary ideas and in the "unbounded licentiousness of an inflammatory Press, pointing continually the poisoned weapons of sedition and blasphemy against all that constitutes human happiness in present possession or in future hope."³ "It is of power, and it

¹ H.O., 41. 4, pp. 302, 478.

² C. D. Yonge, *Liverpool*, ii. 424 sqq. But for Grenville's letter (November 12, 1819) there would probably have been only one Act against the Press. *Liverpool*, replying, said of the state of the Press: "This is really the root of the evil; but it is far more difficult to deal with than any other part of the subject. The only satisfactory conclusion at which we have arrived is to get rid of the mischievous cheap publications by extending the principle of the Stamp Duty."—*Ibid.* (November 14th), 434.

For the Grenville attitude cf. Duke of Buckingham, *Memoirs of the Court of George IV*, i. 15.

³ *Hansard*, xli. 458-9 (November 30th).

openly boasts itself to be of power, to overthrow all that is now standing in this country."¹

Lord Grenville and his supporters were very far, indeed, from Lord Grey, who "from his heart believed that those who really entertained mischievous intentions against the Constitution were few in number, less in consequence, and would be altogether nothing in effect," unless Ministers persisted in trying to meet the march and progress of discontent in the wrong way by piling up impolitic restraints on the ground that even urgent distress was not to be reasoned with but to be silenced. The restraints now proposed were to Grey a mere joke compared with the power wielded by the *ancient regime*: yet even this was insufficient to check the evil,

for in such a system there was no stopping till it came to the power of the sword; and that, when Public Opinion was once excited against it, would produce the very evil it was intended to prevent. There was, indeed, no real defence in any country under such a Constitution as that of England but a system of liberty which should conciliate the affection and esteem of the people. All other devices were absolutely futile.²

From the aristocratic liberalism of Grey and Holland to the reactionary conservatism of Grenville; from the support of the old Blasphemy-law, or any other part of the old Libel-law, to the proposal or the acceptance of the new Bills with or without amendment; from opposition to the increased tax to a welcome for equalization of the burden on newspaper and pamphlet: almost every political standpoint that could be adopted was taken up by some group or some person among the Whigs, and, fighting from so many different quarters, there could not fail to be some who occupied a point of historical vantage—some few who, like Grey, had a feeling for political realities, and the broad sweep of whose imagination was not utterly false to the course of human events. But among them all there was not one single voice lifted up on behalf of a greater freedom for the Press than it had ever yet enjoyed. On the contrary, most Whigs were more intent on the details of the most efficient device for limiting the influence of the Press. The great struggle was taking place outside the Houses of Parliament.

¹ *Hansard*, xli. 461. Similarly, other speakers, *ibid.*, 595, 607.

² *Ibid.*, 481-3.

4. THE RESULTS OF THE NEW LEGISLATION.

The Six Acts as a whole, and those two Acts in particular which directly concerned the Press, and even the Parliamentary debates on the Bills, were all of importance in the struggle for a Free Press. The speeches in Parliament made it clear that the great majority of both parties in both Houses did not object to prosecutions for seditious and blasphemous libel, and it is significant that many, even of those who did not call themselves Christians, supported the means they thought the most effectual for suppressing the spread of rationalism among the lower orders.¹ Erskine and Tierney and Brougham share with the Tory Ministry the responsibility for a prolongation of Press-prosecutions, especially on religious grounds.

This was to some extent compensated for by Lord Holland's arguments against banishment and transportation, and by Mackintosh's differentiation between different parts of the Press. Henceforward, with only two or three unfortunate exceptions, the regular newspapers retained their practical immunity from prosecution, which was confined to more popular publications. Or, to put the same thing in quite a different way, the ordinary newspapers that attacked the party in power without attacking the King or the Constitution in Church or State were henceforward, with one momentous exception, freer from prosecution than they had been during the earlier part of James Perry's editorship of the *Morning Chronicle*.

Holland showed the objections to banishing malcontents to a foreign country, Erskine showed the objections to transporting them anywhere inside the Empire, and Denman showed how the scheme of banishment had not been worked out in detail.² And did the punishment for a second conviction apply to a second conviction obtained on the same day as the first? This special punishment for libel met with grave and unanswerable objections, even if libel prosecutions in general escaped unscathed. Judges saw the storm that would arise if they used their discretion in favour of banishment. It would have required exceptional courage

¹ "Hypocrites! I think I know at least fifteen or sixteen of the most active and talkative among them, not one of whom is a Christian."—Place, *ubi supra*, f. 36. W. Smith, of Norwich, was one of the few exceptions

² *Hansard*, xli. 1526 (December 23rd).

to do in the light of London what was done in the comparative obscurity of Edinburgh.¹ Perhaps the Attorney-Generals were also not anxious to give the Judges any chance to make the Ministry's position difficult by sending into exile an opponent whom they had prosecuted. Above all, Grand Juries became less willing to indict, and the Press as a whole became likewise more suspicious of privately instituted prosecutions, and therefore of prosecuting-societies. The result was that Judges had little inclination and less opportunity to resort to the extreme rigours of the law.

Why, then, was the punishment of banishment or transportation for the second offence legalized? Partly perhaps as a compliment to Lord Grenville, whom the Prime Minister had some hope of attracting into his Cabinet. Partly perhaps as a threat to likely offenders, showing them where even their first offence might possibly lead them.² Partly perhaps to please Lord Chancellor Eldon, as being the nearest approach to the penalty for high treason and the best obtainable substitute for the now abolished, but much regretted, pillory.³ There was never any complaint about the police searching for and seizing copies of libels as this same Act empowered them to do. Most remarkable of all was the explanation of sedition which was inserted on Lord Ellenborough's motion, which was not intended either as a definition of the old law or as an enactment of a new.⁴ One can only conclude that it was intended to serve, after the fashion of a medieval statute, as a public proclamation and warning to would-be libellers, and a confirmation of the established law. The importance of the Act was political and not legal. Perhaps no more important dead-letter has been put upon the Statute-book in modern times.

One reason for this unexpected result was the conflicting aims of the two Press Acts of 1819. The Libels Act was ostensibly to punish libels; the Publications Act was to prevent them from being dangerous. The former was unnecessary because the latter seemed successful. The latter was a real ministerial measure and was meant to be successful; the former was merely an after-thought suggested by a friendly Whig. The former was partly

¹ *Edinburgh Annual Register* did not mention the Scottish libel trials.

² *Hansard*, xli. 1432 (Gifford).

³ *Ibid.*, 727 (Eldon), 979 (Sidmouth).

⁴ *Ibid.*, 971, 973 (Liverpool).

repealed in 1830; the latter flourished till 1836. In a country where the Parliament did not plainly and obviously represent the mass of the people, the libels most dangerous to the Constitution were those which circulated among the newly awakened masses: an increase in the price of periodicals would lessen their sale, and it mattered little whether the increase were obtained by imposing the newspaper stamp-duty of fourpence gross or by fixing sixpence as the minimum price for a pamphlet no larger than a single sheet of a modern London newspaper. The aim of this measure was not simply to lessen the number of readers of these popular Radical and rationalist works, but also by so doing to make their publication in the first instance quite unprofitable.

It was to restrain offences which arose from mere pecuniary considerations, and which could most appropriately be prevented only by means of pecuniary considerations [as Canning said].¹

In fact, the Government and its supporters assumed that because sedition and blasphemy were profitable trades, the lucre was the aim of such men as Carlile. The assumption, which was quite in keeping with the dominant psychology of that age, turned out to be wrong; but in 1819 few persons had learned what qualities Richard Carlile possessed, and none imagined that only a dozen years later the impecunious Hetherington would be defying the law, and very few guessed that the working people of England might spend sixpence or more a week on periodicals. As it was, Wooler's *Black Dwarf* was raised in price to sixpence, and continued until Cartwright died in 1824.² *Dolby's Parliamentary Register* was sold only in sixpenny parts.³ Davison's *Cap of Liberty* and *Medusa* were combined and enlarged and sold for sixpence. Carlile's *Republican* was doubled in size and sold for sixpence until the end of 1826. Cobbett hesitated during the winter.⁴ But

¹ *Hansard*, xli. 1496 (December 22nd). Similarly, *Gent. Mag.*, lxxxix. 455. "Carlile's defence was all a falsehood. No man of common sense could believe him to have had any point in view beyond the guilty profit of his publications. The man was poor; he knew that money was to be made by the sale of moral poison; he looked for his gain to the ignorance and vice of the populace."

² It became a 3d. monthly, May 1824; Cartwright died, September; the *Dwarf* came to an end, December 1824.

³ Not in British Museum, but see list of publications at the end of his *Total Eclipse* (1820).

⁴ Meanwhile he attempted a stamped daily, *Cobbett's Evening Post*, and recommended "reading partnerships" of twenty or thirty. He was also a candidate for Parliamentary election.

by April he, too, had settled down to produce a sixpenny edition of his weekly *Register*, and also a shilling edition on which the newspaper-stamp was paid, in order to obtain free postage by the Royal mail. This went on until 1827, when the Stamp Office awoke to the fact that a paper containing public news, and not exceeding two sheets, was liable to the newspaper-stamp.¹ Cobbett then gladly halved the size of the *Register*, paid duty, and sold it for sevenpence post free. "The stamp," he wrote, "*gives wings to the Register: it makes it fly by the regular channels of the Post Office.*"² It is interesting to notice that, though the Publications Act imposed the newspaper-duty on weeklies "not exceeding two sheets," no sixpenny weekly did exceed two sheets after the first few weeks of 1820: these thirty-two-page octavo periodicals sold for sixpence and paid only the pamphlet-duty of three shillings an issue. The high price of these "little books" of course precluded the majority of the people from purchasing them. But the obstacle of price could not hinder the keen minority.

Every effort will undoubtedly be used by the friends of arbitrary power to impede the progress of knowledge [wrote a friend of Carlyle]: they will endeavour, by increasing its price, to put it out of the reach of the poor. But it is now too late: the poor Republican who has but one shilling in the world will cheerfully part with half of it, to be possessed of the only book whose principles are congenial to his mind, and, when he is seated by his fireside, will think himself still happy that he has been taught *to lay out his money in the acquisition of knowledge rather than in purchasing those vile liquors* which he had perhaps been accustomed to drink, which would ruin his understanding, destroy his domestic peace, and increase the revenue of that system he wishes to be destroyed.³

Sidmouth would willingly have suppressed the new reading-rooms and clubs that were springing up all over the country; but he could not devise any satisfactory measure.⁴ The great intellectual awakening among a section of Britain's people could not have been produced by education without the great popular agitation, nor could it well have been effected by that agitation had it not been for the cheap publications of the last few years. A new interest

¹ *Cobbett's Weekly Political Register* (November 24, 1827). The Solicitor for Stamps did not mention the size; but if he did not imply it he was misreading the Publications Acts.

² *Ibid.* (December 29, 1827).

³ J. A. St. John, "Appeal to Friends of Freedom," in *Rep.* (December 31, 1819), which he edited when Carlyle was first in prison.

⁴ H.O., 41. 5, p. 330 (December 6, 1819), Sidmouth to a J.P.

in the printed word had arisen, new vistas of knowledge had been opened up, which the new laws were powerless to eradicate.¹

Finally, the direct restriction on the Press must not blind us to the increased importance which the Press derived indirectly from the Six Acts as a whole. One of the chief of them was the Act to prevent the training of persons in the use of arms and the practice of military evolutions and exercises (60 Geo. III. c. 1). This Act was dangerous while the Government was not actually representative of the people, but was yet able to call to its aid the regular soldiers in the barracks Pitt had built; and because of its implicit denial of the hitherto generally acknowledged right of rebellion this Act was strongly opposed. It meant that, apart from the antiquated right of petition, the only pressure which could be brought to bear on Government was the moral force of public opinion. The balance thus turned against the pike and in favour of the printing-press. From this there followed several results of the first importance. When the means of armed rebellion were made illegal and punishable the discontent inspired by the Press became less dangerous; the overt act could more easily be punished, and a danger that was only possible and perhaps remote could be more safely neglected. Radicals came to rely more on persuasion than on physical force. A Government which dared not let itself appear to be intimidated by force could give way to public opinion without dishonour. The views expressed in print may very probably have been those only of the reading public; but that meant that they were the views of the least-uneducated part of the community, and that consequently their judgement was least to be distrusted and their good opinion was the most necessary to keep.

In the summer of 1819 there was a very real and imminent danger of widespread rioting and disorder, though not of any organized insurrection or revolution. Some restrictions, mainly local and temporary, were needed for security's sake. Dammed out of all other courses, and with Parliamentary representation not yet opened to them, the Press was the one channel left through which the people's discontents could flow; and though the banks erected around were of absurd height, it was something that the channel was the only one open to the nascent democracy.

E.g. the Radical brushmakers in Thomas Cooper, *Autobiography*, ch. iv.

Yet time was needed before the Six Acts could be seen to have done any good, or to have, at least, failed to do any harm. For the moment the Radicals were stunned by the threat of coercion that ended the year in the course of which they had hoped to achieve Reform.

And now [wrote Cobbett in the last week of cheap periodicals]¹ And now, TWOPENNY TRASH, dear little twopenny trash, go thy ways! Thou hast acted thy part in this great drama. Ten thousand wagon loads of the volumes that fill the libraries and booksellers' shops have never caused a thousandth part of the thinking nor a millionth part of the stir that thou hast caused. Thou hast frightened more and greater villains than ever were frightened by the jail and the gibbet. And thou hast created more pleasure and more hope in the breasts of honest men than ever were before created by tongue or pen since England was England. When thy stupid, corrupt, malignant, and cowardly enemies shall be rotten and forgotten, thou wilt live, be beloved, admired, and renowned.

!END OF "TWOPENNY TRASH."

¹ *Cobbett's Weekly Political Register* (January 6, 1820).

CHAPTER FIVE

THE FAILURE OF THE GOVERNMENT, 1820

1. THE TRIUMPH OF THE PRESS IN THE QUEEN'S AFFAIR.
2. TORY LIBELLERS.
3. LIBELS BY THE QUEEN'S SUPPORTERS.

1. THE TRIUMPH OF THE PRESS IN THE QUEEN'S AFFAIR, 1820.

THE Struggle for the Freedom of the Press cannot be abstracted from the general political movements with which it was closely entangled and of which it formed an inextricable part. Its connection with the agitations of 1816-19 was thus very important, and its significance in the remarkable events of 1820 was just as great.

At the beginning of 1820 there were only the rumblings that continued after the storm of the previous years. A Chairman of Quarter Sessions could still read to a Grand Jury a Royal Proclamation for the punishing of vice and immorality, and follow it with a charge of his own:

It was the solemn duty incumbent on the Gentlemen of the Jury to apply themselves sincerely and vigilantly to the effectuating of His Majesty's gracious and benevolent views. It was particularly necessary at a time when desperate and diabolical men were using every art and straining every nerve to introduce disorder and anarchy into the country to overturn the faith of the people in their Redeemer, to shake their allegiance to their Sovereign, and to weaken and destroy their obedience to the laws and attachment to the Constitution—when open attempts were made to uproot all good and moral principles, to infuse a spirit of discontent and sedition, and to incite to the commission of such malignant and atrocious crimes as all true Englishmen viewed with shuddering and horror.¹

On the other side the Radicals were chafing against the quartering of troops in the manufacturing districts. Wroe's successor as publisher of the *Manchester Observer* was specially outspoken in giving accounts of a taproom brawl, where, in the absence of any

¹ At Westminster, April 6, 1820.

officer, some drunken soldiers injured a dozen men in trying "to give the Radicals a sound beating":

We are not worms to be trampled upon or sported with by every ruffian "in authority" [he said] who dares to gage the depths of our patience. Terribly one day will rain down the revenge of the people on their oppressors.¹

For libelling the King's troops he was sentenced to a year's imprisonment in Lancaster Castle.² At the Assizes Sir W. D. Best repeated the remarkable opinion we have already noticed:

With the truth or falsehood of the libel the jury had nothing to do. . . . If this narrative were false, there could be no manner of doubt that it was a gross and abominable libel. If it were true, what was the duty of the defendant as an English subject? Not to make a paragraph of the transaction, to get a livelihood by vending his exaggerations, but to have taken steps for securing the offenders and bringing the affair before the proper tribunal. By a publication in his newspaper what did this man do? He rendered the administration of justice impossible because he rendered a fair trial impossible.³

In short, it was libellous to attack the Government before the "public-opinion tribunal," if there was a possibility that by going out of one's way one might obtain the prosecution of the troops employed by the Government.⁴

Meanwhile there had been infinitely more important occurrences in the main stream of events. At London it had seemed as though an overflow of popular feeling might sweep away the monarchy itself.⁵ Dam a river, and it turns aside into a new course, unless its pent-up energy is drained off into fertilizing channels. Repress popular demonstrations and publications, and the Radical movement takes another course. So it was that some new development might have been expected as the outcome of the lean years of agitation. Carlyle, at least, thought that a crisis was imminent at the end of 1819.⁶ Real revolution there was none nearer than Spain, where "Freedom's second dawn" gave him a welcome opportunity

¹ *Manchester Observer*, April 29, May 6, 1820.

² On May 25, 1821.

³ *Manchester Observer*, April 14, 1821.

⁴ There was then no public prosecutor except the Attorney-General. So Best's advice was remarkably difficult for men of little money or leisure or legal knowledge.

⁵ J. Campbell, *Lives of the Lord Chancellors*, x. 6; Halévy, *Histoire*, ii. 94.

⁶ *Rep.* (December 3, 1819).

of dating his *Republican* by some other era than the Christian.¹ Carlyle little dreamed what form the new crisis would take in Britain. He looked for a republic, and instead there came an outburst of Royalism. George III died at last, and his son, the Prince Regent, whose vices were as well known as his old father's virtues, became King in name as well as in fact. But George IV had a wife who had lived abroad for many years, and she now returned in the hope of sharing in his coronation. For the first time since Henry VIII an English king, therefore, forced his Ministers to do their utmost to get him a divorce from his official wife. The Prime Minister had to introduce a retrospective Bill of Pains and Penalties, to dissolve the marriage and deprive Caroline of her Royal title; and the Attorney-General proved how open to suspicion her conduct abroad had laid her. But the people were still more suspicious of the character of the foreign witnesses whose stories occupied Parliament all through the summer.

The Queen had been accompanied on her return to England by a Radical alderman of London, and her arrival had been greeted by the firing of cannon, the pealing of bells, the illumination of windows. In the imagination of the people she seemed the none too faultless heroine of tragedy, while George IV seemed more like the wicked king of melodrama and legend. In her the injustice suffered by millions was personified and made palpable, and the readers of newspapers eagerly devoured the regular reports of behaviour they hated. The Ministers, who had a few months before been anxious to lose no time in saving the endangered morals of the people, came in for fresh odium as they stooped at the bidding of their "young master" to make Parliament a place for the telling of obscene tales. The unquestioning loyalty of the Army was so shaken that sentries would present arms as the Queen passed, or drop their muskets and clap their hands. By the autumn the Government's majority in the House of Lords had sunk so low that the Bill had to be dropped, the whole Metropolis and even the ships in the Pool blazed out with illumination, mobs smashed the windows of the *Courier* and the *New Times*—papers that supported the Ministry through thick and thin—and mounted troops had to parade the principal thoroughfares.

¹ *Spanish Revolution*, January 1, 1820. Hone sold likenesses of the leaders. Cf. Byron, *Vision of Judgement*, viii.

In this strange turn in the popular agitations there were three striking facts—all momentous to the Press. One was that the Whigs and the Radicals made common cause in attacking the Ministry and championing the Queen. Henry Brougham and Thomas Denman were her counsel, and both thus achieved a popularity which did not leave them till they came into office with the Whig Ministry of 1830. Whigs as they were, they did not shrink from comparing George IV and his Queen to Nero and Octavia, and the Whig Press was not a whit less outspoken than the Whig lawyers. The two-party system had been restored; a Government that prided itself on its constitutionalism could hardly suppress the views of the respectable constitutional opposition; and in any case the volume of criticisms and seditious libel that was poured out was greater than an Attorney-General, busy with the Queen's trial, could possibly cope with; so what survived of the Radical Press shared largely that immunity from prosecution which the Whigs had come to enjoy.

Secondly, one notices that the unexpected turn given to the popular movement was intimately connected with the activity of William Cobbett, who was one of the few popular leaders free from prosecution, and who now put off his red waistcoat, on occasion, and paid his respects to the Queen in court-suit and sword. Perhaps he even wrote her replies to the addresses sent her by public bodies.¹ He certainly demonstrated to the world that a Radical or Patriot could be a loyalist too, or could be loyal to one-half the monarchy at least. This was the beginning of his great decade of popularity, and it affected not only him personally, but also the whole Radical movement: it gained them a new reputation for constitutionalism, and the old terms of Patriot and Loyalist came to be dropped. Revolutionary writing passed out of fashion; instigation to mutiny and assassination ceased; the danger from seditious publications seemed to be less, and Press-prosecutions seemed less necessary. Public opinion noticed the difference between Richard Carlile and his supporters, and William Cobbett, that typical John Bull, the only ardent Anglican among all the Radical Reformers.

In the third place, the King's person and character became a

¹ Halévy, *op. cit.*, ii. 93, citing Lewis Melville, *Life and Letters of William Cobbett*, i. 148 sqq., 163 sqq.

standing joke, although his office passed almost without criticism. The Radical monarchist could support the Queen; the Radical republican could attack the King. But provided the publication was amusing enough, it could not be safely prosecuted: no Attorney-General could have read Leigh Hunt's *Coronation Song* to a London jury in a crowded court. Moreover, Hone's political squibs were imitated by every Radical bookseller in Town: Dolby, Fairburn, Benbow, Wilson, and the rest, were publishing many editions of their *Royal Letter Bag* and *Queen's Budget Opened* and *Kooli Khan* and *Peep at the Pavilion* and *Total Eclipse*, many of them illustrated by J. R. Cruikshank.¹ But, above all, there were the shilling satires of William Hone himself, and of George Cruikshank, his famous collaborator, both of whom realized thoroughly the great part the Press was playing in the "acquittal" of the Queen. The most popular of their joint productions was the *Queen's Matrimonial Ladder*, the first step in which was like a first study in "The Bottle," and the last of which showed the King wheeled off in a barrow as cat's meat after his degradation; the most decisive step of all, the one by which he woke the British lion, was Publication. The great watchful eye of the hand press looked down from heaven, like the Sun and Shield of the Lord:

As yon bright orb, that vivifies our ball,
Sees through our system and illumines all,—
So sees and shines our MORAL SUN, THE PRESS,
Alike to vivify the mind and bless. . . .
Scorned, exiled, baffled, goaded in distress,
She owes her safety to a fearless Press:
With all the freedom that it makes its own
It guards alike the people and their throne,
While fools with darkling eyeballs shun its gaze
And soaring villains scorch beneath its blaze.²

Another pamphlet that was almost as popular was just as bold. *Non mi ricordo* had three woodcuts by George Cruikshank: the first showed the King in the pillory—"Who are you?"; the second pictured him on a gridiron—"The fat in the fire"; the third sketched him as head-waiter sitting on the sign-board of

¹ *The Total Eclipse* [of justice for the oppressed], ended with the National Anthem, "God — the King," and a picture of the burning of the Commandments.

² Over forty editions in 1820.

"The Crown," the sign of the old public house (formerly a free house) called "The Political House that Jack built," in which his health was being drunk while he was busily sawing off the sign of "The Crown," with the fall of which he would fall himself.¹ Then there was Hone's *Form of Prayer for Queen Caroline*, with the queenly arms of the hand press supported by the people and by liberty, and the motto "Knowledge is Power." When the Bill was dropped Hone had a transparency painted by George Cruikshank and exhibited at his shop on Ludgate Hill during the illuminations commencing on the 11th and ending on the 15th of November, 1820, "in celebration of the *VICTORY obtained by THE PRESS for the LIBERTIES OF THE PEOPLE* which had been assailed in the person of *the Queen*; the words '*TRIUMPH OF THE PRESS*' being displayed in variegated lamps as a motto above. On the 29th, when *the Queen* went to St. Paul's, it was again exhibited, with Lord Bacon's immortal words '*KNOWLEDGE IS POWER*,' displayed in like manner."² Finally, there was Hone's *Political Showman—at Home! exhibiting his cabinet of curiosities and creatures, all alive*. It began with a portrait of the Political Showman: a hand press on legs, with an ink-pot and quills for a hat. Then came some extracts from late seventeenth-century works on the Press: "Being marked only with *four-and-twenty letters, variously transposed* by the help of a *PRINTING-PRESS, PAPER* works miracles," ran one of them. "The Devil dares no more come near a *Stationer's* heap or a *Printer's* office than rats dare put their noses into a cheesemonger's shop." The Show closed with the familiar picture of *MY EYE*—the all-seeing printing-press.

Ladies and Gentlemen, I wish you a good day. Keep to the RIGHT. Walk steadily FORWARD. The animals may make an uproar, but don't be alarmed; I'll see you safe out. Remember they are under my control, and cannot take a step beyond the reach of MY EYE.

There followed a description of the Boa Desolater or Legitimate Vampire, and a prophecy of his early death.

His existence is drawing to a close. It has been ascertained that the way to put him *quietly* out of the world is by a *BLACK DOSE* consisting of the *four-and-twenty letters* of the alphabet, properly *composed*, made up

¹ Over thirty editions in 1820.

² Reproduction in *Political Showman*.

in certain *formes*, covered with sheets of white *paper* and well *worked* in a *Columbian* PRESS. These PAPERS are to be *forced down his throat* DAILY, *morning and evening*, and on every *seventh* day a *double* dose should be administered. The operation is accelerated by the powerful *exhibition* of the WOOD DRAUGHTS.

Thus with woodcut and letter-press the triumph of the People and the Press was celebrated. The old Common Law and the newly enacted penalties both failed to stem the tide.

When any explosion of nature takes place it is in no way the part of sound philosophy to prostrate itself before the formidable phenomenon instead of raising, at any risk, a dyke to stop the progress of the ruin.

So Canning had said, less than a year before, when he had helped raise up the Libels Bill as a dyke that should hold off the despotism of the Press¹; but now the dyke had broken and Ministers had to bow before the deluge. It was the Queen—and the King that insisted on “the Queen’s affair”—that made nugatory the recent Acts of repression, and that revived the cause of Parliamentary Reform and the Freedom of the Press.

Her answers to her addressers have conveyed the principles of reform and the love of liberty into every honest bosom in the country [wrote Carlyle the Republican], whilst she has been paying a tribute to the Printing-press, she has increased its force in a three-fold degree; and whilst the people have been defending her as their Queen and as an injured woman, they have advanced the principles of liberty and their own cause, to a degree that would have occupied two or three years under other circumstances to have made a similar progress.²

2. TORY LIBELLERS.

In 1819 the Tory Ministry had launched a series of Press-prosecutions for the purpose of maintaining the nation’s respect for the Constitution and for the preservation of their morals. In 1820 their King showed that he cared little about his own reputation or the people’s morals, and at the same time some of their Tory supporters were to show themselves even more licentious than the Radicals in their unscrupulous libels, not on institutions, but on persons. It was useless for a Government to silence its open opponents if its allies were to create difficulties just as grave; and

¹ *Hansard*, xli. 1547 (December 23, 1819).

² *Rep.*, iv. 617 (December 29, 1820).

it became impossible to administer, with any pretence of impartiality, laws which were in their very essence partisan. A Government that had almost reached the nadir of unpopularity dared not cut down the Radical productions without some pretence of cutting down Tory productions also; but so complete a harvest of Radical tares and Tory wheat was more than the Government could hope to cope with. So the tares tended to be left alone like the wheat.

The "hireling press" had long been a common object of Radical derision; but apart from much highly coloured vituperation nothing of note appeared until a remarkable "placard conspiracy" was unearthed during the Queen's affair.¹ Some friends of Wooler and Cartwright tracked down the author of some of the most inflammatory bills and posters of recent years, and found him to be a Tory, well known at Whitehall, with one son at the Horse Guards and another at the Board of Control.² One of them ran:

If, responsive to our real Champion's Call, "every man shall do his duty," that mass of Corruption, miscalled Government, shall soon be blotted from the loathing eyes of this enslaved community. The weltering flesh of our suffering brethren, the regular soldiers (reluctantly compelled to cut throats at the nod of magistrates, and rashly designated the Butchers of Waterloo), rescued from laceration, will bleed for and not against us. *A million per annum saved in a single item, the Executive*; our groaning country lightened of its leviathan, the national debt, accumulated by boroughmongering conspirators, treacherous to the interests of the non-represented; and a starving people, tantalized by untasted abundance, will be chartered to share the fat of the land monopolized by drones.

Universal Suffrage, Annual Parliaments, and Voting by Ballot—or the Grave! [ran another].

But perhaps the most harmful was a threatening letter sent to the men who were to sit on the jury at Burdett's trial, and which may have biased them against him:

"Private" is placed at the head of this paper. It is a fashion to slight anonymous threats; yet the transgressor of the injunction at the top, whoever he may be, is here gravely warned that he must abide the consequence of divulging this document.

The man to whom nine articles of this kind were traced was arrested at his house by Wooler's solicitor and a police officer

¹ Numerous newspaper cuttings in *Place Collection*, XXXIX. ii. 69 sqq., XL. ii. 23 sq., 211 sq.

² Franklin, alias Fletcher alias Forbes.

one Sunday morning, brought before a Bow-street magistrate, and released on bail, so that he disappeared, presumably to the Continent.¹ With his good fortune was contrasted the fate of a country lad named Addington who had come up to Town and, being out of employment, had distributed inflammatory bills, which he could not read, for a shilling; the magistrate said that, having found that the boy's statement was true, he had, out of compassion for his situation, fined him only five pounds, and imprisoned him in the House of Correction for only three months. In Parliament, Joseph Hume then read an affidavit by the printer of the papers, and at Lord Sidmouth's request all the incriminating documents were handed over to the Home Office which offered a reward of £200 for the man's arrest and gave instructions for instant prosecution and for outlawry if he had escaped, as he had.² True bills were found against him by the Westminster Grand Jury for conspiracy to excite sedition, for conspiracy to cause certain friends of the Queen to be suspected of sedition, and for misdemeanour in prejudicing Burdett's jury. . . . But this man had definitely escaped. So subscriptions were raised and a friend of his, to whose house some bill-stickers had been traced, was indicted for conspiring to publish seditious libels, and for conspiracy to cause it to be believed that certain disaffected persons had incited subjects to unlawful opposition to the Government's measures; and also for publishing a seditious paper with the intent to submit those persons to the penalties incurred by the publishers of seditious libels.³ Of course, the charge could not be brought home to this defendant personally, and he was acquitted after proving himself a good Whig.⁴ But his case gave an opportunity for proving up to the hilt that orders had been given, by a man who was not a Radical, for the printing of handbills, hat-bills, and posters, which purported to favour the Radicals but which were couched in such intemperate and violent language that they

¹ *The Times*, October 11, 1820.

² Hume, October 17, 1820.—*Hansard* (N.S.), iii. 756 sqq. Copies of letters in H.O., 41. 6, pp. 326 sqq. Placard in *Place Collection*, XL. ii. 213.

³ Circular letter (November 13, 1820) saying expenses had hitherto been borne by Major Cartwright, Alderman Wood, and Mr. Pearson—in *Place Collection*, XXXIX. ii. 69, XL. ii. 227. The man indicted was Denis O'Brien—*Annual Register* (1821), p. 419; *State Trials*, i. 1368.

⁴ February 21, 1821. Counsel for prosecution: Charles Pearson and M. D. Hill. Counsel for defence: Scarlett, Gurney, Bolland. Witnesses for defence: Bedford, Holland, Erskine, Mackintosh.

must have prejudiced sober and moderate men against the Radicals, and might even have inflamed their more rash supporters to violence and consequent destruction. Yet the fact that these libels had not caused any disorder, although they had been distributed on the occasions when they were most likely to do so, showed how small was the danger attendant on a free Press. After this revelation it was not surprising that sixty-six members voted for giving leave to bring in a Bill to repeal the Libels Act of 1819 against only eighty-eight noes.¹

Another publication, arising directly out of the Queen's Affair, attracted more attention, and was the object of Whig and Radical prosecutions. This was a weekly newspaper named *John Bull*. It appeared immediately after the proceedings against the Queen had been dropped, and its object was to frighten the Queen's supporters away from her side by publishing all the scandal current about her visitors, and by bringing to light every flaw in their reputation and every weak point in their family history. There can be no doubt, said the son of one who wrote for it,

but that the design, which must have been communicated to certain influential members of the Tory party—probably to Royalty itself—was received with tacit approbation, if not with assurances of active support.

A suspicion, perhaps, may be admitted, that the party whose interests were so materially advanced by the new paper did not prove altogether unmindful of the obligation. But whether anything in the shape of an honorarium was or was not subsequently tendered to the proprietors it is not in our power to state.²

John Bull at once obtained ten times as large a circulation as had been expected, and it soon mounted to nearly ten thousand a week.³ Before long, however, even those whose battles *John Bull* fought did not like to acknowledge an ally who carried on the war with audacity and cleverness, but with little regard to delicacy and sometimes without much respect for truth. Among those it attacked were some ladies related to the Hon. H. G. Bennet, a well-known Radical Member of Parliament, and a criminal information for libelling them was granted by the Court of King's

¹ Motion by Lennard and Denman (May 8, 1821).—*Hansard*, v. 553 sqq.

² R. H. D. Barham (son of "Thomas Ingoldsby"), *Life of Theodore Hook* (ed. 1877), pp. 140, 144.

³ *Ibid.*, p. 145, and evidence in *Waithman v. Shackell, Arrowsmith, and Weaver*, 1822. Also James Grant, *Newspaper Press*, iii. 54-63.

Bench. Soon after *John Bull* ventured to comment on Bennet's motives in making a statement in the House of Commons; Bennet therefore moved, and the House agreed, that this was a breach of privilege. The printer attended, but cross-examination failed to reveal the author.¹ The proprietors were therefore summoned, and with them the nominal editor, who professed himself the author, though no one believed him; Bennet, Radical though he was, moved that the Attorney-General be instructed to prosecute; Burdett and Brougham, and even Castlereagh, objected, however, that an ordinary trial subsequent to Parliamentary inquisition would be unjust, and next day Weaver, the printer, and Cooper, the nominal editor and professed author, were committed to Newgate, till the session ended two months later.²

An attack was made on another prominent Radical, Robert Waithman, an Alderman and Sheriff and linen draper in the City, whom it ridiculed as having purchased stolen shawls and made a false income-tax return.³ So as to give the defendants an opportunity to prove the charges, he brought a civil action against them, and a jury gave him damages of £500 under the direction of the Chief Justice.⁴

Above all, there were libels on the Queen after her death; and, although she was beyond the reach of malice, and although the accused retained the Solicitor-General for their defence, they were found Guilty, the printer and a part-proprietor named Shackell being each fined £100 and imprisoned for three months, and another registered proprietor being fined £300.⁵

In after-years it became known that this unscrupulous paper was inspired by Theodore Hook (1788-1841), a young man who had spent his 'teens writing comic-operas and melodramas, and who in 1812 had been sent out to Mauritius as Treasurer as a reward for entertaining the Prince Regent with his improvisations

¹ The paragraph is said to have been put in the publisher's hands by a ticket-porter of the Temple.—Barham, *op. cit.*, p. 149.

² May 11 to July 11, 1821. *Annual Register* (1821), p. 49. Weaver and two nominal proprietors were sentenced to imprisonment, fine, and security in November 1821.—*Ibid.*, p. 176.

³ September 9, 1821.

⁴ *Annual Register*, pp. 76, 404 sqq. (April 20, 1822). Counsel for Plaintiff: Scarlett and Gurney.

⁵ Libels, February 25, March 2, April 8, May 14, May 27, 1821. Trial, January 4. Sentence, May 20, 1822. Counsel for prosecution: Denman.—*Annual Register* (1822), pp. 5 sq., 87.

of music and rhyme. In 1818 his chief clerk there had accused him of impropriating public money many months before, and had then committed suicide. A deficit of over £12,000 was proved, and even more was alleged. Hook's property was sold up, and after unjustifiably harsh treatment he was sent home to England under military guard. Here no criminal proceedings were taken against him, and he was released from custody. While an inquiry by the Colonial Audit Board was hanging over his head he launched his *John Bull* against the Government's opponents and the enemies of his old patron, the King. It was not until the end of 1821 that he was declared a debtor to the Crown and was driven into a sponging-house and a debtors' prison.

The real proprietor who financed the venture was Shackell, who had previously printed some broadsides for Hook.¹ The second registered proprietor was a man of straw. The nominal printer was a journeyman in Shackell's office. The nominal editor's duty was to correct for the press "and to act as a sort of lightning-conductor to the concern."² All who wished to keep their consciences clear of ever *writing* anything for *John Bull* were free to deliver their contributions orally. Dean Hook was among the early contributors, and the Rev. R. H. Barham, famous in after-years for his *Ingoldsby Legends*, was among the later. But every precaution was taken to hide the secret of the paper's origin from the public at large.

The conceit of some people is amusing; and it has not been unfrequently remarked that conceit is most abundant where talent is most scarce [wrote Hook, in *John Bull*, when his connection with it began to be rumoured]. Our readers will see that we have received a letter from Mr. Hook, disowning and disavowing all connection with paper. Partly out of good nature, and partly from an anxiety to show the gentleman how little desirous we are to be associated with him, we have made a declaration which will doubtless be quite satisfactory to his morbid sensibility and affected squeamishness. We are free to confess that two things surprise us in this business: the first, that anything which we have thought worthy of giving to the public should have been mistaken for

¹ Carlyle knew him.—*Rep.* (May 31, 1822).

² Barham, *Hook*, p. 143. On January 2, 1822, a jury found a libel in a number of *John Bull*, but had to acquit the printer, publisher, and proprietor as the evidence that they were implicated in the sale was so slight that proof was defective. There was so much reshuffling that "the learned gentlemen had, by mistake, gotten the wrong affidavit." Scarlett was counsel for the prosecution; the Solicitor-General for the defence.—*Annual Register* (1822), p. 1 sq.

Mr. Hook's; and secondly, that *such a person* as Mr. Hook should think himself disgraced by a connection with *John Bull*.¹

With oracular deception such as this the Government's scandal-mongering and anonymous allies stooped even lower than the vilest of Opposition prints. While *John Bull* went unscathed by the Government how could cleaner and more honourable papers be prosecuted? Yet so long as Whigs and Radicals pursued *John Bull* in Courts of Law why should Tories hold back their hand?

"The reign of calumny"² was not confined to England; but in Scotland participation in it was definitely traced to a member of the Government. The Lord Advocate, Sir William Rae, was attempting to do indirectly by patronage what he could not do directly by prosecution.

In 1820 [he said in his own defence] various trials had taken place for seditious and libellous publications, and insurrections had actually broken out in several districts. Subsequently to that period [i.e. during the Queen's affair] the Press of Scotland promulgated the most licentious opinions, and every effort was resorted to for the purpose of stirring up and inflaming the minds of the people. There was not a county in Scotland from which complaints did not arrive describing the ill effects that were produced by the manner in which the Press was conducted. Things were in this situation when an individual recommended me to give my support to the *Clydesdale Journal* which I observed had already received the support of many other persons. I, perceiving that the great object of the Press in Scotland was to make the people unhappy and discontented with their condition, did promise to recommend the paper in question among those who were exposed to the operations of the licentious Press.³

The *Clydesdale Journal* was run by two partners, Borthwick and Alexander, who had long been angling for official support.⁴ In 1820 the journal changed its title to the *Glasgow Sentinel* and in November the Lord Advocate recommended it in "strictly private" circular letters.⁵

Edinburgh was then similarly provided with a *Beacon* (January 1821). Its printer was soon afterwards thrashed in the street by an active Whig, James Stuart, of Dunearn, who was smarting under the personal attacks of this paper. Another Whig, James Gibson,

¹ Quoted, Barham, *Hook*, p. 153.

² H. Cockburn, *Letters . . . on Affairs in Scotland*, p. 53.

³ *Hansard*, vii. 1351 (June 25, 1822).

⁴ H.O., 42. 195 (November 8, 1819).

⁵ *Hansard*, vii. 1324 sqq.

wrote to the Lord Advocate asking if he was a partner.¹ Rae, in reply, said that he was not a partner, and that he had done nothing beyond signing a deed of which he sent a copy. This was a joint bond, the signatories of which bound themselves as securities to a bank to the amount of £100 each, in case the *Beacon* should run into debt, which, as Lockhart has observed, was only a peculiarly Scottish way of making a subscription.² The bond was signed by the Lord Advocate, the Solicitor-General for Scotland, two depute-advocates, and some sheriffs and sheriff-deputes, including Sir Walter Scott among others.³ The patronage involved could not be reckoned simply in terms of money, the Lord Advocate's powers were such that there was a grave danger that the path to promotion at the Edinburgh Bar might be open only to those who supported his pet paper.

As soon as the names of the office-holders were withdrawn the Edinburgh *Beacon* ceased to appear.⁴ The *Glasgow Sentinel* meanwhile went on its way. Time and again it attacked Stuart, till it made "Stuart" rhyme with "coward" in an anonymous song. Borthwick, the publisher, staved off an action for damages by giving up the manuscripts of the articles Stuart complained of, and Stuart decided that "Bozzy's" son, Sir Alexander Boswell, of Auchinleck, had written the song in a disguised hand. Boswell was an expert shot, whereas Stuart had fired a pistol only once or twice before. So Boswell made up his mind for a duel; he did not deny that he had libelled Stuart, nor did he offer him any apologies. So they fought, and, excellent shot though he was, Boswell was killed. Stuart was prosecuted for doing what the social canon commanded; he was defended by the chief Whig barristers, and was acquitted before the High Court (June 10, 1822). By this time Borthwick had been charged by one of the depute-advocates for conspiring with Stuart to steal manuscripts from Alexander, whose partner it was wrongly alleged he had ceased to be; while Stuart was awaiting trial Borthwick was brought from Dundee in irons, as if to influence opinion against

¹ Later Sir James Gibson Craig. He obtained a verdict with £500 damages with costs (December 1822). Lord A. Hamilton also obtained damages and costs (June 1822).—H. Cockburn, *Memorials* (1909 ed.), p. 374.

² Lockhart, *Scott* (ed. 1902), vi. 395 sqq.

³ Cockburn, *Memorials*, pp. 357 sqq.

⁴ Omond, *Lord Advocates*, ii. 272 sq.

Stuart; then, when Stuart was acquitted, Borthwick was liberated (June 12th).

The truth is that Borthwick has been imprisoned as a thief and Stuart tried as a murderer, merely because the former gave up papers in which the Advocate had an interest as a libeller to conceal, and the latter shot the author of the articles by which his Lordship & Co. were accustomed to defame.

So wrote Henry Cockburn.¹

In the House of Commons, Abercromby moved for a Committee of Inquiry into the conduct of the Scottish Law-officers in relation to the public Press.² Two of the depute-advocates sent such provocative letters to him that he started for Scotland to challenge them, and they had to be bound over to keep the peace and be summoned to the Bar of the House for a breach of privilege.³ A year later Abercromby again returned to the charge.⁴ On both occasions the Ministry had very small majorities.⁵ and the powers of the Lord Advocate came in for much more criticism as the result.⁶ As to the Press, "I have no doubt," wrote Cockburn, "that the libelling system, at least in so far as it depends on His Majesty's servants, is nearly at the last gasp and won't be soon renewed."⁷

For the Government's supporters to attack the personal honour of their opponents rather than their principles or policy would, in any case, have been a service of very doubtful value. Coming at that time, they made the impartial administration of the Libel-law politically almost impossible, since the Tory calumniators were legally as criminal as their political opponents, and were morally even worse. The faint chance of impartial administration that remained was completely dashed by the personal support accorded to some of the worst of libellers by Ministers and other servants of the Crown, and perhaps by Royalty itself.

¹ Cockburn to Romilly's son-in-law, T. F. Kennedy (June 5, 1822), in *Letters* . . . p. 58. For the whole incident see *ibid.*, 50 sqq.; Cockburn, *Memorials*, pp. 376 sqq.; Omond, *Lord Advocates*, ii. 273 sqq.

² June 25, 1822.—*Hansard*, vii. 1324 sqq.

³ July 17, 1822.

⁴ June 3, 1823.—*Hansard*, ix., 664 sqq.

⁵ 120/95 in 1822; 102/96 in 1823.

⁶ *Edinburgh Review*, xxxvi. etc., *passim*.

⁷ *Letters* . . . p. 63 (July 15, 1822).

3. LIBELS BY THE QUEEN'S SUPPORTERS, 1820-21.

While the Bill of Pains and Penalties was before the House of Lords, an Exeter newspaper, *Flindell's Western Luminary*, said that the Queen was as devoted to Venus as to Bacchus, and that she was "such a woman as would, if found on our pavement, be committed to Bridewell and whipped."

Two Members complained of this in the House of Commons; but it could not well be made a breach of the privilege of that House, and it would be unfair to send a man to trial "under the heavy disadvantage of an opinion expressed by the House against him."¹ The whole Press was disgracing itself, said Castlereagh, and the Attorney-General, whose duty it was to act impartially, was unable to repress all the shameful libels that were being published; the *Examiner* was as bad on her judges as Flindell was on the Queen.² He quoted from the last number of the *Examiner*, when the waste of public time and the offer of a "bribe" to the Queen were discussed, and where it was suggested that a truly representative Parliament would have told the King that the ordinary Courts were open to him, and that its proper business could not be suspended for such matters:

This is what a true Commons House would have done; but when that House for the main part is composed of venal boroughmongers, grasping placemen, greedy adventurers, and aspiring title-hunters, or the representatives of such worthies—a body, in short, containing a far greater portion of public criminals than public guardians—what can be expected from it, but—just what we have seen it so readily perform?³

So John Hunt, the Radical, and Flindell, the obscure Tory, were both prosecuted, with the result that Hunt was imprisoned for one year for attacking a public abuse, while Flindell was imprisoned for only eight months for making attacks he could not substantiate on a woman's private character.⁴

¹ *Hansard*, ii. 586 sqq., esp. Tierney, (July 24, 25, 1820).

² Similarly (February 2, 1821), Castlereagh repeated that there were so many libels about that there was no time to take them all up.—*Hansard*, iv. 287 sqq., 338.

Castlereagh also gave Carlile a "puff direct" for saying that monarchical government would destroy itself like every other vice.—*Rep.* (August 4, 1820).

³ July 24, 1820.

⁴ C. H. Timperley gave an obituary notice of Thomas Flindell in his *Dictionary of Printers and Printing* (1839), p. 893.

John Hunt stood charged with an unlawful, malicious, and seditious libel for the fifth time in his life. On previous occasions his brother, Leigh Hunt, had been associated with him, and had suffered the same sentence eight years before. John was now the sole proprietor, publisher, and printer of the paper, besides being the author of the paragraphs in question. He decided to prevent it being inferred that he had any malicious intention, by giving evidence of the truth of his statements and the advisability of their publication. With this object in view, he wrote to William Hone for books on State corruption, and to Francis Place for "a list of the crimes of Hon. House"¹ Thus armed, he denied the charge of malice and gloried in the sedition by which reforms are achieved, and showed that Chatham and Pitt and Burke and many others were as malicious and seditious as he was himself; he was merely telling the truth and calling notoriety notorious. The result was that it took the jury nearly two hours to find him Guilty, and this verdict was not given till a talesman had asked the Chief Justice whether malice constituted part of the Law of Libel, and had received the reply that, as in every other crime, they had a right to assume that the publisher had no good motive if they believed the article was calculated to produce an unlawful effect.² Truth did not matter, and truth that was freely uttered in Parliament might be criminal outside. "In that House," said Mr. Justice Bayley in sentencing John Hunt:

In that House, there is a peculiar privilege of speech; but the publication of those speeches, should they contain anything derogatory to that House, might be considered libellous.

The paragraph in question consisted perhaps of declamation and vilification; but at the end of fifty or one hundred years of argument, as Leigh Hunt asked, has not a subject "a right to state his conclusions, especially if they are at the same time the conclusions of a majority of the English people"?³ Nor was it possible to have a new trial on account of the sheriff's partiality in summoning the jury:

¹ British Mus. Add. MSS., 37949 f. 92, Hone to Place (December 20, 1820); and f. 89, J. Hunt to Place (December 19, 1820).

² *Trial*, February 20, 1821, published by Hone, with preface by John Hunt's son.

³ *Examiner* (June 3, 1821).

It is no ground for a new trial, that two of the non-attending special-jurymen named in the panel had not been summoned.¹

John Hunt was sentenced to one year's imprisonment in the House of Correction, and then to give securities to keep the peace for three years, himself in £500 and two others in £250 each.² "In case another conviction for libel is obtained against me, during that period, I and my friends," he wrote, "will have to pay £1,000 to the King."³ He was to pass that year in prison, and while he was there his business was to decline,⁴ and he was to be only a little while at liberty before being a third time convicted.

John Hunt—the tried, undaunted, persevering, intelligent, and upright defender of the people's liberties, at his post of honour, the Coldbath Fields prison.

So he seemed to Bentham in his hermitage, as the year of imprisonment was drawing to its close.⁵

What the *Examiner* case was to the English Radical writers the Durham case was to the Whig lawyers, with the difference that the latter were legally the more successful. Just as John Hunt had libelled Parliament, so John Ambrose Williams, a gentleman who owned and published the *Durham Chronicle*, had libelled the Church.⁶ Moreover, the publication of a *Report of the Trial of J. A. Williams* gave the *Edinburgh Review* an opportunity to discuss clerical abuses, and this discussion carried far more weight than the paragraph originally objected to, because it was far less rhetorical, and, although more convincing, it was out of the reach of prosecution.⁷

When the Queen died dramatically in the very month after she had been turned away from the Abbey doors on Coronation-day, the bells of nearly the whole country had tolled the news of her passing. But at Durham they were silent, and their silence led to

¹ *State Trials*, i. 1367, on motion by Denman.

² Judgement, May 28, 1821.

³ *Examiner*, June 3, 1821.

⁴ R. B. Johnson, *Leigh Hunt*, p. 74.

⁵ Note in Memorandum Book, "From Jeremy Bentham, 14th May, 1822," in *Works*, x. 531. There is a biographical sketch of John Hunt in *Life and Labours of Albany Fonblanque*, pp. 96 sqq.

⁶ *State Trials*, i. 1291 sqq.

⁷ *Edinburgh Review*, xxxvii. 350 sqq. (November 1822). There were three editions of the *Report*, and numerous replies.

those that professed Christian love being warmly criticized in the local independent Press.

Out on such hypocrisy [ran the *Durham Chronicle*]. It is such conduct that renders the very name of our established clergy odious till it stinks in the nostrils; that makes our churches look like deserted sepulchres rather than temples of the living God; that raises up conventicles in every corner, and increases the brood of wild fanatics and enthusiasts; that causes our beneficed dignitaries to be regarded as usurpers of their possessions; that deprives them of all pastoral influence and respect; that, in short, has left them no support or prop in the attachment or veneration of the people. . . . It is impossible that such a system can last.¹

Now, the Cathedral Clergy had played a very prominent and, as some said, a very unchristian part in local politics. One of them had even described Williams in a pamphlet as

a miserable mercenary who eats the bread of prostitution and panders to the low appetite of those who cannot or dare not cater for their own malignity.²

Without consulting his clergy the Bishop instituted a prosecution in their name. He applied to the King's Bench for a criminal information, which the Judges were pleased to grant, and Williams stood charged with

intending (1) to bring into contempt the United *Church* of England and Ireland as by law established; and (2) to scandalize, traduce, and vilify, and to bring into public hatred and contempt, the *clergy* of the said United Church of England and Ireland; and (3) *particularly the clergy resident in or near the City of Durham and the suburbs thereof.*

At the Summer Assizes, Williams was brought up for trial at Durham. Brougham was his counsel, as he had been the Queen's, and he argued that "so much Freedom of Discussion as is consistent with a calm and temperate demeanour in the disputants" would mean merely such discussion "as may leave the subject untouched and the reader unmoved; may satisfy the public prosecutor and please the persons attacked." The clergy were no more established and no more freed from criticism than any other public functionaries such as constables and sextons. All institutions might lawfully be discussed; the ecclesiastical system might be

¹ August 18, 1821.

² Rev. Phillpots, later Bishop of Exeter.—Brougham in *State Trials*, *ubi supra*.

discussed with more warmth than any other institution, because it was connected with higher principles and deeper feelings: of all Churches the Protestant ought the most to challenge full discussion, because it was the very creature of Free Inquiry; of all Protestant Churches that of England and Ireland ought to be the most anxious for discussion, as it was the most reformed of the Reformed Churches of Europe. After this argument from a man riding on the high tide of popularity it was in vain that the Judge, Baron Wood of the Exchequer, said:

I have no difficulty in telling you that when anything is printed and published for the purpose of bringing into hatred and contempt any of the establishments of the country, it is a libel and ought to be punished; and if it were not so this Liberty of the Press, as it is called, might pull down all our institutions. It is said that discussion is not to be checked. What discussion is there in that? It is downright slander. . . . It is a direct incentive to the people to subdue the establishments.

If the Press has a liberty to write and publish anything it pleases against the establishments of our country, this government cannot last. It seems to me that the defendant should be convicted, for this is a libel, and a very gross libel. I am required by law to give you my opinion, and I tell you that this is a very gross libel.

Brougham interrupted:

I am sure your Lordship will excuse me, but you are not *directed*, only *empowered*, by law, to give your opinion. The proviso in the Statute merely saves the right which the Court before had.

Five hours later the jury decided that Williams was guilty of a libel on the Durham clergy, but neither on the other clergy nor on the Church as a whole. In fact the jury decided, after long deliberation, not to consider the libel as a criminal offence against an established institution or a nation-wide class of men, but to regard it simply as a defamatory libel reflecting on a roughly defined group of individuals. But, even so, no sentence was passed. On the contrary, the Court of King's Bench granted a rule to show cause for arrest of judgement, because the verdict negated the charge as a whole, and because the "Durham clergy" was a very vague phrase which probably included Nonconformists and Catholics and did not refer to any distinct body.

Such were the prosecutions of two supporters of the Queen who had ventured to attack abuses in Church and State, using

intemperate language in voicing opinions that were not ungrounded and were far from uncommon. In only one case had the Attorney-General ventured to move, and at Durham it was shown for almost the first time that even a country jury might hesitate before convicting a libeller. When half the nation shared a libeller's views, his prosecutions could not but be regarded as an act of wanton vengeance. Perhaps it was already becoming evident that the law was so sweeping that anyone who wished could play fast and loose with it. To those to whom this was not yet clear it was soon to be revealed.

CHAPTER SIX

THE FAILURE OF THE GOVERNMENT'S SUPPORTERS, 1820-22.

1. THE CONSTITUTIONAL ASSOCIATION.
2. OBJECTIONS TO THE ASSOCIATION.
3. THE "BRIDGE-STREET GANG" DEFEATED BY JURIES.
4. THE DISCREDITING OF THE ASSOCIATION.

I. THE CONSTITUTIONAL ASSOCIATION.

THE Queen's Affair made the impartial application of the law by the Government impossible. The next act in the tragicomedy of repression was to show a voluntary-subscription society step into the breach and be overwhelmed. At the King's request the Government

had under their most serious consideration the present state of the Press, and adverted to the highly mischievous nature of many of its recent productions, as well in the shape of caricatures as of newspaper pamphlets, etc.;

but they were held up by the difficulties which the Law-officers saw in the way of prosecution, except in very exceptional circumstances.¹ While the Government were thinking, their supporters were acting, and were showing how little could be done. Once again Hone and his associates were laughing the Government out of court, and another year of laxity, like 1818, might well have appeared. There was no longer any excuse on the Tory side that the laws were not savage enough. They only required to be put into force; and what the Government did not do others undertook.

The licentiousness of the Press had been carried far beyond its usual limits [said the *Annual Register*]. Newspapers, placards, pamphlets, and caricatures of the most filthy and odious description were exposed to sale

¹ H.O., 41.6, p. 389 (January 11, 1821), Sidmouth to Attorney- and Solicitor-General, probably as the result of George IV's letter to Lord Chancellor Eldon, January 9, 1821, printed in the Duke of Buckingham's *Memoirs of the Court of George IV*, i. 107 sq.

in every street, alley, and lane of the Metropolis, and circulated thence, though in less profusion, yet with great activity, to the most distant parts of the Kingdom.¹

In view of these circumstances some gentlemen met together at London in December 1820, the month following the Queen's triumph and thanksgiving. They founded a "Constitutional Association for opposing the Progress of Disloyal and Seditious Principles," and circulated an *Address* which mentioned the unexampled blessing of a Constitution envied and admired by the world, for which all ranks and degrees of men might have been expected to bend in humble gratitude to the Almighty and Merciful Disposer of human events. Yet there was everywhere a spirit of hostility to the liberty and property and security of all. The obvious consequences of this evil included a daily weakening of the bonds of union between the humbler ranks of society and their natural guardians and protectors; denunciations of hatred towards the greatest and best men in the country; vain and ostentatious contempt of all sound learning, experience, and knowledge. Among the obvious causes of the evil was "a licentious Press, which, without excepting even the day of sacred rest, inundates the nation with an unexampled profusion of slanderous, seditious, and blasphemous publications."

The PRESS, that great and invaluable blessing of civilized life—that mighty engine for diffusing the light of Liberty and of the Gospel—has unhappily become, in the hands of evil men, a lever to shake the foundations of social and moral order. Its power, which within the last century has been multiplied an hundredfold, may now be almost said to reign paramount in the guidance of Public Opinion; and to those friends of their country who reflect deeply on this fact it cannot but be matter of serious alarm to observe that a very large proportion of our periodical publications is under the direction, either of avowed enemies of the Constitution or of persons whose sole principle of action is their own private and selfish interest.

All who became members of the Association therefore resolved that they would maintain order and support the execution of the laws;

employ their influence, individually and collectively, in discountenancing and opposing the dissemination of seditious principles; and, above, all

¹ *Annual Register* (1821), p. 60.

resort to such lawful measures as may be deemed expedient to restrain the publishing and circulating of seditious and treasonable libels.

They resolved also to

encourage persons of integrity and talent in the literary world to exert their abilities in confuting the sophistries, dissipating the illusions, and exposing the falsehoods which are employed by wicked and designing men to mislead the people.

They then indulged in some sophistry themselves:

In wishing that the *licentiousness of the Press* should be restrained the Association is actuated by a sincere desire to secure the *true Liberty of the Press*—that Liberty which subsists only under the protecting shield of law, and which is sure to be one of the first sacrifices made in a Political Revolution. Such a Liberty is absolutely incompatible with the present licentiousness, and the one must soon destroy the other. The alternative, however, is still before the nation. The Members of this Society have no wish to prescribe limits to discussion, nor even harshly to censure the excesses of an honest though mistaken zeal; but there are publications (and unfortunately many of those circulating among the labouring classes are of this description) on the criminality of which no rational doubt can be entertained. These works consist almost wholly of scurrilous slanders and of the most false and inflammatory statements respecting public institutions and public men; they abound with personal calumny and offer direct incitements to violence and crime. In short, they are inveterately hostile to public and private virtue, and favourable only to whatever tends to degrade and debase mankind. All that is estimable in the country would be benefited by their suppression, and nothing would be so much improved and elevated as the Press itself.

A concise exposition of the Law of Libel was appended to the *Address*. After stating the criminality of any print or printed matter that made a *private* individual look ridiculous, it went on to say, in flat contradiction to the common-sense development of the law during the next generation:

This same rule will apply in every respect to libels upon *public men*. It is absurd in principle to suppose that men, in proportion to their elevation, should be deprived of the common protection of the law.

Nay, more, the crime was aggravated if the libel reflected on persons entrusted with the administration of public affairs, thus alienating the affections of subjects and breeding amongst them a dislike of their governors.¹

¹ *Address* dated April 17, 1821, in *Place Collection*, xxxix. ii. Reprinted in Richard Mence, *Law of Libel*, i. 186 sqq.

The president of the Association was one Sir John Sewell; the treasurer was a London alderman; the honorary secretary was one Charles Murray; the honorary assistant secretary was named J. B. Sharp, and his office was at Bridge Street, Blackfriars.

During the first four months about seven hundred persons subscribed. The most important name on the list was that of the Duke of Wellington. Altogether there were twenty peers and nearly forty members of the House of Commons, six English Bishops and three Welsh (including Durham and Llandaff), and ninety-seven other clergymen.¹

The Association could also reckon on the whole-hearted support of two unflinchingly Ministerial daily papers—the *Courier* and the *New Times*. The latter backed up the efforts of the Constitutional Association with an appeal “from Cato to the people of England,” treating prosecution as a class question. The author was convinced that Hone and Cobbett and the Hunts and Carliles were living on the bread (and honesty) of the lower orders, and were moulding the opinions of the labourer,

whose understanding barely enables him to distinguish between a cabbage and a potato.

I know [he said] that it has been argued by those who can never see a danger until it slaps them in the face . . . that the libels of former times were as virulent as those of the present age, and yet they produced no serious mischief. The answer to this is conclusive: the libels of former times were only read by the higher classes, which possessed the means of detecting their falsehood—those of the present times are exclusively read by the lower orders, who are destitute of all means of arriving at the truth. Former libels were directed against one party in favour of another—present ones are directed against all parties and ranks above the labouring population. Former libels attacked only measures of policy and men—present ones attack laws and institutions. Former libels were only intended to drive a ministry from office—the object of the present ones is to dethrone the King and overthrow the Constitution. Moreover, to render their effects still more destructive, the poison of a great number of them is spewed forth on the Sabbath.²

To put an end to this insidious parasitism was the object of the Tories who supported the Constitutional Association. They aimed at making it the secular counterpart of the Society

¹ Analysis by Place in his anonymous pamphlet, *On the Law of Libel*, p. 53. Hannah More subscribed later.—*New Times* (June 11, 1821).

² *New Times* (ed. Stoddart), January 5, 1821.

for the Suppression of Vice. It was to save the lower orders from seditious libels and satires on the King, just as its companion society had for twenty years been trying to protect them against blasphemous libels, and, with more success, against obscenity. Positive voluntarism in elementary education was calling forth the negative counter-voluntarism of Press-prosecutions by subscription societies for the defence of the Constitution of the State and of the State Church.

2. OBJECTIONS TO THE ASSOCIATION.

From its very beginning the Constitutional Association was attacked by the Radical Press; the early prosecutions instituted by it did not diminish the opposition; and by the middle of 1821 the Whigs had entered the lists against it.

The Radical criticism was based both on general constitutional grounds and on special personal objections.

Who cannot see that this Constitutional Association is an insult to good government, and would be so felt by able statesmen! [exclaimed John Hunt's *Examiner*, after ridiculing the lack of humour in the *Address*]. We never could reconcile ourselves to that anomaly, the "Society for the Suppression of Vice"; no petty and incidental good which it may effect is an equivalent for the mischief of such precedents as that of a combination to enforce laws partially and according to discretion. But a Society for the Suppression of Vice is a bagatelle compared to the monstrous assumption of a *political* association to regulate and keep in order the opinions of fellow-subjects. Government is a delegated trust, tacitly, if not expressly, held by compact, and ought to be administered by responsible persons and upon understood conditions. Who ever dreamt that this power was to be assumed at discretion by a club, a junto, a cabal? Is a Constitutional Association to do what an Attorney-General feels it inexpedient to do? And having escaped the profound appreciation of the leading silk gowns, are we to be turned over to Alderman Rothwell and a subscription purse?¹

"How many Governments are we to be subject to?" asked another Opposition journal,² and the *British Press* was voicing the general opinion of moderate papers when it said:

The Duke of Wellington, if he felt the dangerous licentiousness of the Press, might in his capacity of a Minister have roused the latent virtues

¹ January 14, 1821, signed "G."

² *Place Collection*, XXXIX. ii. 85.

of his colleagues, and have new-strung the relaxed energy of the Attorney-General. Associations within a State are never to be endured, unless the Government has lost the power of protecting the public interests from aggression.¹

It was necessary to distinguish clearly between different kinds of partial associations inside the great society of the nation as a whole. The Constitutional Association was not to be confounded with county associations for the prosecution of felons:

To stop the mouths of a suffering people, and relieve themselves from the annoyance of hearing charges repeated in public which they now scarcely venture to deny,

was not to be confused with the execution of laws against generally recognized offences against society. The British Reformers were not selfish and brutal agitators.

And are they to be hunted down by a ferocious set of interested catspaws as if they were thieves and housebreakers? Yet that is the only pretence upon which this cowardly band can proceed; for if they once admit the question at issue between the People and the Borough-mongers to be one that should be settled by reason and discussion, why call in the law and set on foot subscriptions to overwhelm their adversaries?²

It was, above all, because of the power of its purse that the Constitutional Association was dangerous. Tory gentlemen and "loyal and anti-Radical females" would not have been willing to bear the expenses of prosecutions entirely on their own account; but when their mites were thrown into a common fund expense ceased to matter.³

Everything depended on the amount of the funds of the Association, and on the character of those who disbursed them. Sir John Sewell, the president, was said to be a pensioner to the tune of £1,500 a year, and therefore interested in preventing Reform;⁴ like Theodore Hook he had held a colonial office, having been Judge of the Vice-Admiralty Court at Malta, the fees of which, exposed by Cochrane, had made it better to let enemy prizes escape.⁵ J. B. Sharpe, the honorary secretary, was said to have been twice

¹ May 29, 1821.

² *Examiner*, May 13, 1821.

³ *Traveller*, April 23, 1821; repeated, May 25th.

⁴ *Place Collection*, XXXIX. ii. 85. See *Examiner* and *Champion* throughout the summer of 1821.

⁵ *Ibid.*, 134; Whitbread in Commons (July 3, 1821).—*Hansard*, v. 1500.

a bankrupt and not to have paid his creditors a farthing dividend.¹ Charles Murray, the honorary assistant secretary, was not, it was assumed, an honorary solicitor to the Association.²

Getting money was the principal reason for getting up the thing at all [declared Francis Place]. Except inasmuch as names and money constitute an Association, no Association ever existed; the subscribers never met, and . . . as a body they never ordered any proceedings. The whole thing was concerted by three or four individuals who had the spending of the money, to their own advantage and to the annoyance of the community.³

At this distance of time, the truth of these aspersions is immaterial: the significant fact is that they were generally bandied about; but one wonders even now why it was that those who ran a libel-prosecuting society did not have the libels on themselves prosecuted.

There were probably many other "silly subscribers"⁴ in the same position as the Chief Justice of the Isle of Ely, who told a Grand Jury in the course of his charge to them:

Having lately given a trifle to the Constitutional Association . . . I was astonished to find that I was dragged from my humble privacy, and that my name was held up to the public with much insult and contempt. This was hard upon me, because I was a very unworthy member of that great and honourable society; for I never was at the Committee-room, nor ever was informed who were the members of the Committee, nor ever had any knowledge of the persons prosecuted or the charge against any of them, but what I learnt from reading the public newspapers.⁵

"The weapons used by this canting crew are as vile as their object," said the *Examiner*, and Place agreed that they "took advantage of defective or bad laws" to the destruction of justice and "of the peace and happiness of the people."⁶ Their methods were well shown in some of the first prosecutions they instituted

¹ *Place Collection*, *ubi supra*, 133.

² *Traveller*, April 23, 1821, etc.

³ *On the Law of Libel*, p. 3. This had been said from the very first.

⁴ Place, *ubi supra*.

⁵ Edward Christian (Professor at Cambridge), *Charges delivered to Grand Juries in the Isle of Ely* . . . (3rd ed., 1821), pp. 440 sqq. Also quoted by a newspaper (July 19, 1821) in *Place Collection*, XXXIX. ii. 125. He also advised J.P.'s to refuse licences to publicans who permitted Sunday newspapers to be read on their premises.—Christian, *op. cit.*, p. 432.

⁶ *Examiner* (May 13, 1821); *On the Law of Libel*, p. 4.

against London publishers. One of the first victims was John Thelwall (1764-1834). He had been prominent among the Radical Reformers who escaped with their necks from the treason trials of 1794; he had subsequently taken to lecturing on elocution instead of on politics and history; and he was now the owner, editor, and publisher of the *Champion*, a tenpenny Sunday review of politics and literature with a sale of only six hundred weekly.¹ He had early adopted as his motto his friend Horne Tooke's old toast: "The Liberty of the Press is like the air we breathe—when we have it not we die," and in the spring of 1821 he was driven into the very front of the struggle for that Freedom. He read in the *New Times* that the Middlesex Grand Jury had endorsed a bill of indictment against him for speaking derogatively of the administration of justice in the selection of juries, and for casting aspersions on the Government in referring to Burdett's imprisonment. But he could not obtain particulars as to the exact charge put forward, and no answer was returned to his inquiries as to whether he would be served with a notice for attendance as a gentleman or be arrested by tipstaffs and bailiffs. One Monday, while he was at dinner with his family and pupils at his cottage at Brixton, he was unexpectedly arrested, walked to Town, and imprisoned for the night. Charles Murray, the "ferret-eyed, teeth-gnashing, place-and-pension-hunting" secretary-solicitor, did not attend at the Judge's chambers till the next evening, and when he did arrive he objected to taking bail, as eight-and-forty hours had not expired, and he insisted on bail for good behaviour as well as for appearance, especially as Thelwall had libelled the Association in the previous number. The Judge took the bail for good behaviour, as that was now always the practice, and Thelwall displayed his good behaviour by thoroughly dissecting the whole Association and all who were connected with it.

This [said this professional rhetorician] is, in fact, the commencement only of a great warfare about to be waged between the Liberty of the Press and the usurping tyranny of a detestable self-constituted Inquisition.²

¹ *Annual Register* (1822), p. 351; *Commons Journals* (1821), lxxvi. 943 sqq. The *Champion* ran from 1814 to 1822. Thelwall bought it in 1818 and published it himself during 1820 and 1821, but sold it before the beginning of 1822. For a headpiece he had a woodcut of a hand press—the true *Champion*.

² *Champion* (May 6, 1821).

Shortly afterwards a neighbour of Thelwall's in the Strand, Thomas Dolby, was arrested. He must long have been obnoxious to many opponents of Reform, by reason of *Dolby's Parliamentary Register* and his more recent broadsides, and as the publisher for a while of Cobbett's works.¹ He was arrested for an alleged libel in his fortnightly *Pasquin*, and was bailed, himself in £100 and two sureties in £50 each, for both appearance and good behaviour. A few days later he was again arrested on a second indictment, this time for selling *A Political Dictionary*.² This time he had to give bail himself in £200 and two sureties in £100 each, making a total of £600, for appearance and good behaviour too. Because of his mischievous behaviour in selling this second libel Murray maintained that the first recognizances were forfeit, and announced that he would serve writs of *scire facias* without delay, to estreat those recognizances into the Exchequer.³ To launch two prosecutions on top of each other against one tradesman, so that he had to find two different sets of persons who were willing to enter into heavy recognizances on his behalf and risk a distress on their goods for every subsequent breach of "good behaviour," raised an outcry in the Press which was followed up by a petition on the table of the House of Commons.⁴

Another petition telling an almost identical story came from William Benbow, also once a bookseller in the Strand, but now a prisoner in the King's Bench. He similarly complained that his friends were unwilling to bind themselves for his indefinite

¹ Cobbett's *Register* and *Grammar*, 1818-1819.

² This little dictionary (1821) may be judged by these examples:—

"*Blasphemy (Ultra-loyal)*: Speaking irreverently of corruption in Church or State."

"*Constitution (in Church or State)*: Religion without piety, law without reason, representatives without constituents, aristocrats without talents, a king without authority, and a people without subsistence."

"*Common Law*: Judge-law: the *terra incognita* of lawyers; anything the Judge pleases; for example, the fining of Mr. Davidson three times in the midst of his defence, or Mr. Clement for publishing Thistlewood's trial. . . ."

"*King*: From the Saxon word *kuennig* or *kuyning*; an abbreviation for *cunning* or crafty, the usual designation of a knave."

"*Parody*: An harmless effusion when from the pen of a Right Honourable in ridicule of virtue and patriotism; but a profane and blasphemous libel when directed against Corruption."

"*Press (licentiousness of the)*: Fearlessly publishing the truth without fear or reward."

³ *Champion*, May 20, 1821.

⁴ *Traveller* (May 26, 1821); *Hansard*, v. 1114 sqq. (June 6, 1821).

and undefinable good behaviour, when the solicitor for the prosecution said that recognizances would be forfeit by the finding of a 'True Bill' against him for any other political offence, even though it were based on false evidence and an acquittal might follow. To make matters worse, trial was being delayed in a case where haste would have been most merciful. Even before his arrest Benbow had been closely pressed by his creditors; but now he had to shut up his shop.¹ Persecution, according to Dolby's *Political Dictionary*, meant

ruining a man's health by loathsome confinement, his pocket by legal expenses, and his family by the destruction of the business which would maintain them.

When their pockets were being drained and their businesses ruined, these two publishers, Dolby and Benbow, petitioned Parliament; but the subject was more fully debated on a motion by Whitbread and Lushington, that the Attorney-General should enter the Royal *nolle sequi* on all indictments laid by the Constitutional Association as a few lawyers had set on foot an illegal society for their own emolument.² The Attorney- and Solicitor-General, who were probably not sorry to be relieved of an unpopular duty by a voluntary organization, argued that there was nothing objectionable about the formation of such an association; on the contrary, indictment by Grand Jury was preferable to the filing of *ex officio* informations; Erskine had seen nothing illegal in the similar Proclamation Society for the suppression of vice when he had acted on its behalf; and if they served as jurors, members of this association would be no more biased against libellers than members of ordinary county associations were against felons. Wilberforce, whose Society for the Suppression of Vice was being attacked both directly and indirectly, "hoped that those who saw the abuses of the Press would go on vindicating the laws against it. Let them turn neither to the right nor to the left in doing it." But, as Brougham retorted, it was a case of "all

¹ *Hansard*, v. 1484 (July 3, 1821). He also had been publisher to Cobbett—the last "villain of a bookseller" with whom Cobbett had any dealings.—Lewis Melville, *Life and Letters of William Cobbett*, ii. 113, 174, 189, 192. He also published Paine's political works openly and his theological works surreptitiously.—*Rep.*, v. 145 sqq. He will appear again, though he was of but slight importance.

² *Ibid.*, v. 1486 sqq. (July 3, 1821).

on one side mown down, all on the other left untouched"; "the Press had teemed with the most disgusting libels; yet had this immaculate association emptied all the phials of their wrath on the one side, and on that only."

Neither Denman nor Brougham, still comrades in arms, denied the legality of the Association. If the legality of such bodies was admitted, two results followed. One was that a counter-organization such as had been suggested would also be legal, but it would at the same time be most objectionable:

As to the formation of a counter-association [said Denman] nothing could be more injurious to the administration of social justice than for two parties to be constantly running a race with each other, endeavouring to pour their several friends into the jury-box, and thus to gain a triumph over the law.¹

Another result of recognizing its legality would be that that legality must not be made an excuse for non-interference, as the abuse of a legal right might be a fair subject for the interference of the House. Though admitting its legality, both agreed that it was unwise and unjust, and quite different from the county societies: in Denman's estimation it was an association for ruining tradesmen and not for punishing criminals.

Not all Whigs agreed with them that the Association was lawful. Sir James Scarlett thought it quite illegal. He was no more liberal than they; he belonged, rather, to the conservative school of Mackintosh, and he was now for regarding the activities of the Association as an illegal usurpation of the State's functions:

If the Attorney-General did not perform his duty sufficiently, why not address the King for his removal, rather than attempt to quicken the administration of the law by constituting a private prosecuting-society?

The Whigs thus agreed with each other and with the Radicals that the Constitutional Association was an evil, although they differed among themselves on the question of its legality, and differed still more from the Radicals on the advisability of libel-prosecutions by the Attorney-General. The Association seemed to the Whigs to be dangerous: the Attorney-General did not.

¹ Cf. "We recommend the establishment of a counteracting one, precisely upon a similar plan, and let illegality be combated by illegality, until 'chaos come again,' the speedy arrival of which, under the present ministers, is unavoidable."—*Examiner* (January 14, 1821).

The former, they said, was irresponsible; the latter, responsible for what he did. Thus the aim of the Whigs was still different from that of the Radicals. The former were against partial prosecutions; the latter, against all Press-prosecutions. Francis Place was nearer the truth when he jotted down in his notebook:

The Attorney-General is responsible . . . to the country!—How, Mr. Lawyer? Irresponsible Ministers, irresponsible House of Commons—and a responsible Attorney-General!

The difference consists in this, that Ministers judge as the Lawyer has recommended them . . . but such a Society is necessarily governed by some of the worst men in it, who care only for the money they make by it. But then *this good, which the lawyer calls an evil, would result: Juries would soon cease to convict for libels.*¹

3. "THE BRIDGE-STREET GANG" DEFEATED BY JURIES.

During its first six months of existence the Constitutional Association had been vigorously attacked in Press and Parliament, and it had given a foretaste of its method of working the law to death. During the next year it was to be utterly discredited by proceedings in the Courts of Law, and opposed by Grand Juries and Petty Juries, both Common and Special, by barristers and by Judges.

The first obstacle encountered was a quite unexpected one. A lawyer who was then in the thick of the struggle recounted it forty years later when, as Recorder of Birmingham, he was addressing a Grand Jury on its powers and functions:

In later years [said Matthew Davenport Hill] Grand Juries have done somewhat equivocal service by "ignoring" Bills framed to carry into effect laws founded on false principles. About the year 1822 [1820-1 in fact] the Executive Government, shrinking from the obloquy which had from year to year been gathering strength against Criminal Informations for seditious libels filed ex officio by the Attorney-General, abandoned in despair its war against the Press—a change of policy which gave great dissatisfaction to a large body of its supporters. Hence the origin of the Constitutional Association, formed to restrain the Press by means of Indictments, which, unlike Informations, had to pass the ordeal of a Grand Jury. Subscriptions flowed in so bountifully, and the social position of the subscribers gave such importance to the undertaking, that much alarm was excited among the friends to the Liberty of the Press. But

¹ Brit. Mus. Add. MSS. 36626 f. 140; Place on *Ed. Rev.*, xxxvii. 110 sqq.

Grand Juries promptly dissipated their fears by throwing out the Bills of the Association in shoals.

By accident it so happened that I obtained some light as to the course pursued in the Grand Jury chamber. I met one evening, at the house of a friend, a gentleman who had that day been the foreman of a Grand Jury in the County of Middlesex, where he had done his part in "ignoring" Bills presented by the Association. He was a banker, a person of education and of the highest character. Nevertheless, his knowledge of the duties imposed by the law upon Grand Juries must have been somewhat imperfect. He gave us the heads of a speech respecting these Bills, which he had made to his brother jurymen, from which it appeared that he had altogether passed by the question of whether the articles prosecuted were libellous or not, according to law, to enlarge on the impolicy of a crusade against the Press—a question which neither he nor they were legally competent to entertain. But they were led to take this ground by the flagrant injustice of the law as it then stood. . . . That the ministers of law, as jurors of all descriptions doubtless are, should themselves disregard their oaths and become lawbreakers is much to be deplored; but where the Law is on one side, while Justice is on the other, Juries will be under a strong temptation to discard the former in their desire to adhere to the latter.¹

There were two ways of preventing prosecutions for seditious libel: the one was to repeal the Common Law by Act of Parliament; the other was to render it inoperative by having Juries fly in the face of law and evidence, and flout the directions of Judges, in the belief that the Law of Libel resided in their own breasts, imagining that they were judges of the law, whereas they were only the judges of whether the act alleged fell within that law. The statutory repeal of the law might perhaps have been preferable; but human nature made jurymen begin to do what Attorney-Generals and prosecuting-associations had long done: they began to pick and choose for personal and political reasons, in disregard of an all-inclusive law. They had endorsed the bill indicating Dolby for publishing the *Political Dictionary*: but when a bookseller named King was charged with selling a copy of the same work to the Association's agent, at whose special request he had gone out of his way to get it in, the Grand Jury threw out the bill against him.² On one occasion a metropolitan Grand Jury threw out four bills at once.³ On another occasion two bills against

¹ M. D. Hill and Sir J. E. E. Wilmot, *Papers on Grand Juries*, pp. 39 sqq.

² *Morning Chronicle and Traveller* (June 16, 1821).

³ June 2, 1821.

Hone, the one for publishing *Non mi Ricordo* and the other for the *Matrimonial Ladder*, were both rejected; they were thought to have been brought forward in revenge for his *Slap at 'Slop,'* as he called Dr. Stoddart, the ex-Jacobin "Bonaparte-phobe," who ran the "*New (or Mock) Times.*" Hone dubbed the Association "The Bridge-street Gang" and under that name this younger brother of the Vice Society henceforward lived and died. He issued placards, too, to the immortal honour of the Middlesex Jurors, who threw out all the indictments preferred by that infamous Association.¹

Mention has already been made of Mr. Alderman Waithman, as a butt for unscrupulous libels.² When he had stood as a Parliamentary candidate three years before, J. B. Sharpe had written a handbill saying that when Waithman came to London to make his fortune, he had left his mother to linger out her days in a parish workhouse. Now, at a meeting of the Livery of London in Common Hall, the Alderman denounced Sharpe as "a mean slanderer" and "a heartless disturber of the ashes of the dead." This was reported in the papers, and in consequence Sharpe made no less than seven attempts to institute proceedings, not against Waithman for slander, but against T. A. Phipps, of *The News*, for libel. The unabashable secretary had the audacity, after four bills of indictment had already been thrown out, to ask the Bow-street magistrates to arrest the proprietor of *The News* and hold him to bail, to answer a fifth charge which he might put forward and which another Grand Jury might perhaps endorse.³

The Times criticized the attack on *The News* as being cowardly, and was itself indicted at the second attempt, the first bill having been 'ignored.' The Gang thus gained one enemy the more; for *The Times* ridiculed the mock-heroic supporters of the institutions of the country, who

place the opinions of two Grand Juries in diametrical opposition to each other on the same identical charge. A speech, which was declared not to be a libel on the 18th of July, could not, with the progress of the

¹ E.g. placard in *Place Collection*, XXXIX. ii. 77. Hone lived just round the corner, on Ludgate Hill.

² His shop was at the corner of Bridge Street and Fleet Street, at Ludgate Circus, where a monument now stands to his memory.

³ May 29, 1821.

crops, ripen into one by the 12th of September, nor, like wine turned to vinegar, change its nature in two short months.

Who can reckon himself secure, even after he sees the record of multiplied escapes, if a person like our honorary Bridge-street Gang Secretary is allowed to gamble with justice out of a subscription-purse, to throw at double or quits as often as he pleases, to wait after a defeat till fortune brings him the chance of a favourable Jury?¹

The Association succeeded, however, in obtaining a few indictments at the hands of Grand Juries, and the first person to be brought before a Petty Jury was Miss Mary Ann Carlile, the sister of Richard Carlile, and even she was not brought to trial till the Association had been seven months in existence. She was charged with selling her brother's *New Year's Address to the Reformers* at his shop. She was tried on July 24, 1821, and, as she had been convicted earlier that same day for a blasphemous libel, her second conviction seemed a foregone conclusion, and a verdict of Guilty would probably have been returned had she been left to her own devices or her brother's. As it was, every circumstance favoured her. For one thing a man named George Bere had been brought up for trial that same day on two different ex-officio informations for libelling the King: he had been found Guilty on the first charge, with the unexpected result that the Solicitor-General declined to offer evidence in the second case, so that the Jury had to acquit Bere of the second charge. Now Miss Carlile stood charged at the instance of the societies and not of the Crown Law-officers, and when the Essex-street prosecuting-society obtained its verdict of blasphemous libel, the Bridge-street prosecuting-society still insisted on its pound of flesh. Other useful accidents were that the defendant was a woman, and that she fainted and had to be carried out of the Court in the middle of the proceedings. Also, the most passionate Judge of King's Bench, Sir William Draper Best, was presiding. Above all, Miss Carlile had one of the boldest and most talented of the younger barristers as counsel, and in him the Judge met more than his match.² After serving at the Battle of the Nile as a midshipman Henry Cooper of Norwich (1784-1824) had been called to the

¹ September 18, 1821.

² "Mr. Cooper represented his client truly as to feeling, most advantageously as to talent, and if one or two of the younger and more ardent members of the profession were to follow his example, the utility of political defendants pleading for themselves might become questionable."—*Examiner*, July 29, 1821.

Bar and had acted as Attorney-General of the Bermudas. He was the intimate friend and intended biographer of Lord Erskine; but, none the less, he was as liberal in his religious as in his political opinions, being a decided enemy to the exclusiveness of the Established Church and a thorough Reformer in the State. He made Mary Ann Carlile's case his own, he made his name in her defence, and then, as though his work was done, he died at the house of Matthew Davenport Hill, his friend, and his name soon faded from the memory of a generation that did not love lawyers.¹

It was remarkable that a Carlile should ever have had resort to a man of law, and it was only the previous night that Cooper had been briefed. Amid a chorus of humorous tittering he cross-examined the witnesses for the prosecution, and showed that one of them had been discharged from the Customs Service on a pension, and now spent his time going round buying libels for the two prosecuting-societies. He cleared himself from all necessary connection with the views of the Carliles, and appealed to the Jury to drop their prejudices against that name and consider the effects of the prosecution regardless of the Judge's opinion. The Constitutional Association were responsible for giving parts of the pamphlet a publicity Miss Carlile had never intended them to have. "Burning to bleed in battles not their own," they had impertinently meddled with what the Law-officers had passed over as not being worth the attention of a Court. They sent their informer to gull a woman into committing a crime, and then they prosecuted her for it. They were not to find a woman Guilty upon mere words—for merely publishing that there was no British constitution—without inquiring exactly what the author meant by that ambiguous expression. But most of all they were to recognize that prosecutions for State-libel were mischievous because they attracted readers and strengthened persecuted opinions.

Governments were not endangered by sixpenny pamphlets. Rome had not fallen a victim to libels. Athens had not been levelled by a paper war. . . . Take away the corruptions of the French Court, the oppression of the nobility, the licentiousness of the rich, and the wretchedness of the poor, and Rousseau and Helvétius might have written themselves blind

¹ *Sketch* of his life by his brother, William Cooper. He made an appeal against the fining of Davison.—*Vide supra*.

before a hand had been raised in furtherance of their doctrines. Upon every principle of common sense such prosecutions were unwise and unnecessary. The libels could do no mischief in themselves; for so far from the people having a general disposition to revolution, it was the most difficult thing in the world to wean them from any system (even though a bad one) to which they were accustomed. But the very noise of prosecution was bush to the wine. He trusted that the Jury, upon mature deliberation, would fling back the dirty prosecution in the faces of those who had been so meddling as to institute it, and that the verdict of Not Guilty, which he confidently anticipated would knock up, in its *coup d'essai*, the busy interference which usurped the powers of public officers for the purpose of perplexing the public peace.

"The trial is altogether one of the most curious and edifying which the public have seen for a long time," commented the *Examiner*; "*imprimis*, the fact of Mr. Justice Best being the Judge, was sure to give it a certain peculiarity."¹ At the very beginning he had intervened with an

I don't think any part of the cross-examination is approaching to anything like regularity . . . but I have no objection to your taking your own course,

which, of course, Cooper did. When the public tittered at the results of the cross-examination, and the prosecuting counsel complained that Cooper was exciting the sort of responses that came from below the bar, he turned the tables by disclaiming the insinuation that he had taken up this case for the purpose of adding to the public odium in which the Government was held. Throughout his two hours' speech he hardly touched the question of legality or illegality. Instead he was rebutting the charge of malice, showing that the alleged seditious libel was innocuous and was not untrue. In so doing he gained the easiest triumph of his address, when he quoted a speech by the late Speaker of the House of Commons about the corruption of the Constitution, on which the Judge promptly intervened:

If Lord Colchester uttered the words in the House of Commons, we cannot discuss them here without a Breach of Privilege; if he uttered them anywhere else, he uttered a libel upon the Constitution of his country.

This was an objection that had silenced John Hunt when he defended himself; but Cooper said he cited the example as a

¹ *Examiner*, July 29, 1821.

matter of history, just as he would do if it were a speech made by Lord Chatham or by Cicero; whether the fact was ten years old or ten thousand, he submitted, could make no difference.¹ "If you do not choose to abide by my opinion, go on and state what you please," replied the Judge. But when Cooper ventured to quote "the laws of a free country (Pennsylvania)" as not providing for the prosecution of State-libel, he was once again pulled up. That was no part of the law of this country, said Best, and he should certainly tell the Jury that they had nothing whatever to do with American law, and that American law could have nothing to do with the case before them.

The Judge did not mend matters by displaying his temper. The Jury retired at 4.30 on Tuesday afternoon. An hour later the foreman reported that they could not agree; another said there was obstinacy; and a third said that he was not himself the only one who stood out: there were four of them. They did not return home that night. At 11.20 on Wednesday morning, when they had been together nearly nineteen hours, they still could not agree. So the prosecution collapsed. The Carliile spell had been broken. The Constitutional Association had made a disastrously bad start. For the first time since the triumphs of Hone and Wooler four years before a real acquittal had been obtained. A Petty Jury had followed the lead of the Grand Juries; the revolt of the jurymen had begun. The tide of popular feeling had turned, and the Bridge-street Gang had turned it.

4. THE DISCREDITING OF THE ASSOCIATION.

The Constitutional Association was a year old before any other indictments were ripe for trial. In those rare cases where Indictments had been endorsed by Grand Juries the Association soon found new impediments cast in its way.

Some half-dozen young barristers held themselves justified in using various legal means of evading the operation of the law (which means the law itself then furnished in ample abundance), in order to protect men

¹ The *Examiner* noted for future use, "as a Tory Judge is an animal most tenacious of his dirty web of sophistry," "Should the Bench object to a reference to facts not legally proved to the Court, it might be replied that a defendant is entitled to reason upon what the Jury know as members of society, and he alone is to assume that they do know what he thinks fit to state, since, if wrong, he only wastes his own breath."—July 29, 1821.

whom they considered objects of cruel persecution, and so many expedients for causing delay—savouring not a little of chicanery—did they manage to suggest to the legal advisers of the alleged libellers, that months passed away before a single trial could be had.¹

In December 1821 Dolby and Thelwall were called to stand their trial. The obloquy which jurymen incurred by convicting criminal libellers resulted in only three out of twenty-four special jurymen answering to their names. Then James Scarlett, on behalf of Dolby, "challenged the array." The jury had been returned by Alderman John Garratt, who was Sheriff of London and Middlesex; but he was also a subscriber to the Association. Thus he had now selected the Jury that was to try a man he was himself prosecuting. The Chief Justice accepted the challenge. A collateral issue was joined. Two jurymen were appointed triers, whether the Sheriff was, or was not, of the Association at the time of making the jury-panel in this case. They decided that there was no certainty that the Sheriff had ever withdrawn his name from the Association; that, even if he had, his money had gone into a general fund and had never been returned; and that therefore he had helped to institute the prosecution. So no trials could be had so long as the Sheriff who returned the jury was a subscriber to the prosecuting-society.

Before these cases again came before the Court the Association was itself brought to the bar. From the very first it had been suspected of illegality, either as a "conspiracy" at Common Law or as a breach of the Illegal Societies Act of 1799 (39 Geo. III. c. 79). In June 1821 an ex-Sheriff and a barrister named Thackeray applied to the Lord Mayor for warrants to apprehend the officials of the Association because they ran "a corresponding branch society" and had not registered it with the Clerk of the Peace as they were required to do by Statute. This application was refused after the Clerk of the Peace for the City of London had proved

¹ M. D. Hill, *Papers on Grand Juries*, p. 40. Who were the young barristers? Hill himself and his friend Cooper, beyond any doubt. Perhaps also Joseph Parkes, of Birmingham (1796-1865), a solicitor who knew the Hills and rendered Hone "a remarkable and valuable service" of an unknown kind, in 1821.—*Life*, by J. K. Buckley, p. 11.

"Several of the young men to whom I have referred have since made names for themselves in their profession. One, now no more, will go down to posterity as the author of a memorable work on jurisprudence."—Hill, *op. cit.*, p. 41; John Austin (1790-1859) is presumably alluded to. Hill Cooper, Austin, and Parkes were all under forty; Brougham was only forty-three.

that that Act was quite a dead letter and that no society except the Freemasons had been registered with him.¹

It remained to prosecute the "combination" as a Common-law "conspiracy." Whether this was done with any hope of success we cannot tell. Perhaps it was intended as a useful means of public exposure. Perhaps it was somewhat of the nature of a practical joke on the part of some of the younger barristers. Be that as it may, a Grand Jury, such as had proved an insurmountable barrier to the Association, endorsed the bill against Sewell, Murray, Sharpe, and another, and these officials, more fortunate than some of their poorer victims, gave bail. The indictment was absurd. It alleged that

the defendants, being evil-disposed persons, and designing to usurp several of the prerogatives of the King and to bring them into contempt, to subvert public justice and the liberties of the realm, and to extort from them money, goods, and chattels—[1] did conspire to threaten to indict, and to indict, divers of His Majesty's subjects, for the publication of pretended seditious and treasonable libels . . . [2] and also that they conspired to extort money, goods, and chattels from certain persons, under colour and pretence of abstaining from further proceedings against them. . . .

The evidence adduced at the trial did not prove that a conspiracy to indict was an illegal conspiracy, or that any illegal extortion had occurred; but the complete inhumanity of the methods of the Association was proved conclusively.²

John Thelwall repeated the story of his unnecessary arrest and imprisonment, and the Chief Justice and the Jury declared that the officers of the Association had been unnecessarily harsh in their treatment of him. Dolby had been asked in the first instance to pay the cost of proceedings against himself, to give up his entire stock of offensive publications, to sign a paper expressing his contrition, and to bind himself for two years not to sell anything which the Association might consider seditious; he had declined to carry the negotiations any farther, and had thereupon again been seized and again held to bail.³

¹ *Times*, *New Times*, *Traveller*, June 28, 1821; *Annual Register* (1821), pp. 88 sqq. (under date June 5th).

² *Annual Register* (April 13, 1822), pp. 397 sqq. Counsel for prosecution included Scarlett and Denman; for defence, Gurney.

³ Dolby was eventually convicted (October 21, 1822), but was not sentenced as he altogether gave up the trade of bookseller.

Another bookseller said that he had been arrested, locked up for a night, confined in gaol over the week-end, because Murray insisted on forty-eight hours' notice of bail, and then released on bail after five days' imprisonment, after paying all fees and his own and Murray's cab fares. Three days later Murray carried off all his political books and papers and caricatures, including even those sent to his waste-paper merchant, and he was forced to sign a list of them. Finally £18 16s. 8d. was demanded to cover expenses incurred, and after appearing before the committee he was let off with payment of £5 as part of the costs of a prosecution stayed at the defendant's request.

Robert Wardell, of the daily *Statesman*, had also had to give bail in order to avoid arrest and imprisonment. He had had to agree to suffer judgement to go by default, and to enter into recognizances in case anything objectionable should subsequently appear in his newspaper. He had to pay costs of over £56, and the bill had been inexcusably run up by extending one indictment against him to the enormous length of fifty-eight folios, which alone cost £20, and also by preferring the charge at the Sessions in the first instance and then having it transferred by writ to King's Bench.¹

Still another man, a printer who sold some few works, had been told that his prosecution would be stayed if he gave up all the publications deemed seditious and paid some £25 expenses. On refusal he, like the others, had been seized, imprisoned, and bailed, and later rearrested.

In all these cases the officers of the Association had inflicted quite inexcusable personal hardship on printers, booksellers, and editors, and had put them to an expense which did no good to any part of the community, except the lawyers and their clerks, who were in the pay of the Association. But the injustice thus suffered was in no way illegal. Unconvicted men might be lawfully imprisoned, and might be not unlawfully required to pay the costs, or part of the costs, of their own prosecution, on the understanding that the prosecution should be stayed or that judgement should go by default: the payment of unnecessary expenses was not extortion. The Chief Justice said that as to

¹ *The Statesman* had been edited (1812-16) by James, the father of Edwin Chadwick, while the editor himself, David Lovell, was in prison for libelling a Government department.

conspiracy to indict he had looked into the authorities on the subject,

and he had found not even a single dictum whence he could infer that an Association to prosecute libels was unlawful;

but members of an association which professed a laudable object might be liable to prosecution if they abused its power for corrupt purposes. As to conspiracy to extort, that would be a heinous offence if proved; but in his opinion the evidence did not sustain the charge. The jury soon agreed with the Judge, and the defendants were found Not Guilty. The Association was thus morally condemned and legally acquitted, and it is impossible to be sure whether either side in the struggle benefited from this ambiguous conclusion.

The final discrediting of the Association came when it extended its sphere of action from London to Lancashire.

In a narrow alley at Manchester a fustian-cutter named David Ridgeway eked out a scanty wage by selling checked linen and thread, tea and coffee, tobacco and snuff, potatoes, children's books, and other odds and ends. If anyone ordered a London book or pamphlet he obtained a copy and displayed it in his window till it was called for, in the hope of drawing fresh orders.¹ A young lad was sent there from a solicitor's office to obtain a copy of Carlile's *New Year's Address to the Reformers of Great Britain*, and he had to go to the shop four times before this twopenny pamphlet could be obtained from London.² Miss Carlile, the original publisher, had been acquitted at London; but at Lancaster this poor and unimportant agent was brought to trial at the Summer Assizes only two months later. Brougham defended, clearly not because he saw no harm in Carlile's pamphlets, but in order to help a poor man and show up the Tories who ran the Constitutional Association. He began by finding that the clerk who called the names of the jurymen was omitting certain names in the list according to instructions given by Murray. He showed how there was nothing anonymous or underhand about the authorship or publication of the *Address*. He pictured the solicitor-

¹ *Rep.*, v. 242 sqq. (February 22, 1822).

² The Solicitor's agent was Thomas Nadin, Jr., son of the notorious Deputy-Constable of Manchester.

secretary saying, when he had been defeated by a London jury, "I will go to Lancaster, where the old Jacobite Tory leaven will ensure me a jury that will not refuse a conviction," and thereupon setting his ferrets to hunt up an offence. He had the whole pamphlet read, showing that there was no improper innuendo. It advocated abstinence and self-improvement rather than bloody insurrection; and Ridgeway, who sold excisable articles, could not have known the contents of a pamphlet that would ruin his trade. In fact, he was a victim in the fangs of harpies, leeches, jackals, zealots. But the Lancaster jury, not nearly so impressed by Brougham's rhetoric as the Metropolitan jury had been by Cooper's eloquence, acted under the direction of the Judge, and immediately found Ridgeway guilty.¹

This, however, was not the end of the matter. There had been much talk about tea and tobacco, and much swearing about Ridgeway's signboard, so much, indeed, that both sides could hardly have been telling the truth. Brougham moved for a new trial on the ground that the Association's witness was perjured; but the motion from that side was rejected, as the witness was only muddled and not perjured. But why should not the Association's solicitor-secretary bring a counter-indictment against Ridgeway himself for perjury? The very idea was inexcusably mean and heartless, and it was carried out with cruel ingenuity.² A little of the feeling this inhumanity excited may be gathered from Francis Place's accurate and passionate narrative of the events following on Ridgeway's conviction, and Place was not the tenderest of men:

Poor and helpless as this man was, wretched as his large family was made, victim as he was of the Noble, Honourable, Right Reverend subscribers, he was dragged to London to receive his sentence, and was committed to Lancaster Gaol.

But malice was not glutted. Poor Ridgeway had, it seems, in an affidavit in mitigation of punishment, sworn to something which, by the ingenuity of Lawyers, was made to appear false, and although he was in prison and his family starving—starved, too, by the Combination of the very Noble and Right Reverend subscribers—still he was further persecuted and was to be tried at Lancaster for perjury. This was more than humanity

¹ September 20, 1821.

² *Annual Register* (1822), pp. 216 sqq. For a North-of-England opinion of the Association, see C. H. Timperley, *Dictionary of Printers and Printing*, p. 881.

could bear, and means were found to convey [nineteen] witnesses for this poor and singularly oppressed man a distance of nearly forty miles; Mr. Brougham and Mr. Evans became his advocates.

But here, at Lancaster, his prosecutors dared not proceed to trial. An excuse was made of an absent witness, and the Judge gave the prosecutors till next day to produce him. On the next day the witness was produced? No, indeed! No witness was produced. Instead of a witness they produced a writ of "*Certiorari*" removing the trial to the Court of King's Bench at Westminster. The Court were struck with amazement; the writ must have been applied for in London days before. The Judge even expressed his indignation; but nothing could be done. THE LAW permitted the proceeding, and, if no means can be found to bring witnesses at another time to London, the poor oppressed unfortunate man in prison must be tried without the means of proving his innocence. [August 28, 29, 1822.]

What will people think of the Great who, by their countenance and their money, cause such proceedings as these? The indignation excited by such an unusual and so beyond-all-precedent mean and unjustifiable a course could not be appeased; Mr. Brougham and Mr. Evans appeared in the Court of King's Bench, and there showed such a case as could not be resisted, and the prosecutors were ordered to pay the costs of not going to trial at Lancaster. [November 9, 1822.]

But now again comes oppression in another shape: the case may still be brought before the Court of King's Bench and a Special Jury at Westminster, and witnesses must be brought from Manchester, a distance of 186 miles, and maintained here for many days; payment for loss of time must be made to them, and then they must be conveyed home again. After all, from the quantity of business before the Court, the cause may not come on at all during the term; or . . . even a Special Jury may not choose to attend to try a cause for the Combination. In either of these cases the witnesses must come to London again, or the poor man must go to trial without them.¹

The last evil feared remained long suspended over the head of Ridgeway, but it did not fall. The Association dwindled to extinguishment, attacked by nearly every section of the Newspaper Press. Place himself contributed a series of articles to the *British Luminary* (November 1822), tracing the evil back from the Association to the whole Law of Criminal Libel and the defects in the jury system and the inadequacy of existing checks on Judges, and penetrating back to the corrupt state of the representation of the people in Parliament, the master grievance, and the

¹ "Oh, it is worthy of the rich, and great, and holy thus to oppress the poor! Oh, it is delightful to see what a nose of wax, plenty of money, and want of honesty can make of law!"—*On the Law of Libel*, p. 54 sq.

preventive of all wholesome measures, without whose reform no beneficial change could be hoped for.

So many curious and useful facts and sound deductions from them on subjects of such high importance to Freemen in this Law-ridden age ought not to be lost to the public for want of a more durable form than the perishable columns of a newspaper.

That was John Hunt's opinion, and he had Place's anonymous articles *On the Law of Libel, with strictures on the self-styled Constitutional Association* reprinted as a little book next year.¹

It showed clearly that the Constitutional Association was not simply a comet that came and was gone. It roused and left behind it an effective protest against the state of things that left room for partisan oppression and legalized injustice. The Freedom of the Press and the purity of the jury-system became more precious after both had suffered this unofficial attack. The revolt of the juries paved the way, however, for a Freedom of the Press that was based on a reluctance of juries to indict or convict for seditious libel, rather than on any fundamental change in the Law of the Constitution.

¹ *On the Law of Libel* (1823), 76 pp., 8vo. The copy in the British Museum Reading Room is catalogued under "Law"; another survives pasted in Place's Autobiography in Add. MSS. 35144, ff. 237 to 274.

CHAPTER SEVEN

THE TRIUMPH OF "FREE DISCUSSION," 1822-25.

1. CARLILE'S WOMENFOLK.
2. WELLINGTON'S ASSOCIATION EXHAUSTED BY CARLILE'S SHOP ASSISTANTS, 1822.
3. WILBERFORCE'S SOCIETY TIRES OF PROSECUTING THEM, 1823.
4. THE HOME OFFICE'S PYRRHIC VICTORY OVER THEM, 1824.
5. CARLILE AT LIBERTY, 1825.

I. CARLILE'S WOMENFOLK.

WHEN a subscription-society sustains a severe moral defeat its ultimate physical extinction, through the falling off of subscriptions, is assured. But until its purse is exhausted victims have to be found for publicity's sake, so as to show that the society is performing its proper functions. The Constitutional Association, after antagonizing juries and judges and barristers all over the country, and obtaining only four convictions and only one sentence, found itself confronted in its closing hours by many willing victims, all of whom worked at Richard Carlile's shop in Fleet Street.

The little group of freethinkers and republicans, of whom Richard Carlile was the most distinguished propagandist, now entered again into the main course of British development. To feel adequately what their intervention meant we must look back at the history of Carlile's business since his imprisonment and the ransacking of his house and shop (November 1819).

Richard Carlile had a wife Jane, whom he had married in his journeyman days. She would have made a shrewd and thrifty wife for a tradesman; but she had no interest in propagandism, and she seems to have thought her husband an enthusiastic fool. The events of 1819, however, made her resent the treatment he received and the injustice the whole family suffered, though she did not share his opinions or appreciate his actions.¹ Between

¹ T. C. Campbell, *op. cit.*, pp. 11, 18.

the conviction of her husband in October and the pronouncement of judgement upon him in November she sold the *First Day's Proceedings upon the Mock Trial of Richard Carlile*, in twopenny parts, containing all his quotations from Paine's *Age of Reason*. At the request of the Society for the Suppression of Vice the Judges agreed to the filing of a criminal information against this publication *in extenso* of a report which contained the whole of an objectionable book read in evidence.¹

On the eve of a confinement she had the bailiffs in. Within a few weeks of her delivery she had to buy back her furniture and beds for herself and her children.² In the snowy weather of January she went down to Dorchester in the mail-coach with a baby less than a month old. On her husband's advice she returned to Fleet Street and reopened the shop, selling "Radical breakfast-powder," and what few books and pamphlets the printers had not delivered or could otherwise be scraped together.³ One thing she refused to do: when she opened the shop on her own and the children's account she would not resume the publication of the account of the trial, imagining that the prosecution of a woman would then be dropped.⁴ In accordance with her expectations the notice of trial was countermanded.⁵ But within a week of the withdrawal of that notice another prosecution was commenced by the same Society. She was indicted and arrested for blasphemous libel in selling Sherwin's *Life of Paine*, especially his account of the prosecution of "the publisher, Mr. D. I. Eaton, who, after experiencing the most brutal treatment from the Judge, Lord Ellenborough, was found guilty and sentenced to eighteen months' imprisonment and to stand in the pillory. It is impossible to think of these legal barbarities, perpetrated as they are in behalf of Christianity, without feelings of the most pointed indignation."⁶ The *Life* from which this was taken had been published in the previous summer, and Mrs. Carlile could only have had left a few copies sent back unsold by country agents who had had them on sale or return.⁷ With this were mixed up extracts from J. B. Smith's letter in *Republican* No. 9, for which Davison was also under indictment.

¹ November 6, 13, 24, 1819.

⁴ *Ibid.*, 229 sq.

⁶ *Ibid.*, 229 sq., iii. 80.

² *Rep.*, vii. 242.

⁵ *Ibid.*, 187.

⁷ *Ibid.*, iii. 416.

³ *Ibid.*, ii. 14 sqq.

Carlile had been laughing at the Society's appeal for more subscriptions, and had given them a free advertisement, as their activities only quickened the sale of the publications they attacked,¹ and now he said:

I take this opportunity of repeating my thanks to the Vice Society for the extensive circulation they are again giving my publications. I hear from London that the prosecution of Mrs. Carlile produces just the same effect as my prosecution did—it quadruples the sale of all her publications. I will convince the members of this Society before seven years have passed away that they have been arrant fools to themselves as well as knaves to me. . . . A prosecution becomes the grand impetus for reading a particular book, and in the language of Paine I say again: *May every good book be prosecuted.*²

On the same day as Davison, and after he had been convicted, Jane Carlile was tried before Mr. Justice Best and found Guilty; but no motion was made for her commitment.³ A month later Matthew Davenport Hill, the young Radical rationalist barrister from Birmingham, got the indictment quashed on a technical ground, because it consisted of three counts and the Grand Jury had endorsed "both" (November 25, 1820).

Now that the Society had failed by the merest accident, the Home Office intervened in order to be rid of the woman. After several works had been purchased by the Treasury Solicitor or sent in by a correspondent, and several ex-officio informations had been filed for numbers of the *Republican*, she was at length brought to trial, a year after she had reopened the shop, for selling a number that asserted the legality of destroying tyrants, designated the majority of the present ministers as tyrants, recommended assassination, and, above all, recommended performing it single-handed (January 19, 1821).⁴

This case, quite apart from the prosecution of Mrs. Carlile, raised the important question, which, however, was not then

¹ *Rep.*, ii. 182 sqq.

² *Ibid.*, iii. 112.

³ Newspaper reports were very brief because the trial was late in the day, and subsequent to Davison's, which had excited much more interest. Mrs. Carlile had her baby in her arms in court.—*Rep.* (October 27, 1820), *Morning Chronicle* (October 24, 1820).

⁴ *H.O.*, 41. 6, pp. 111, 228, 239, 255. *Annual Register* (1821), chronicle, p. 20. *State Trials* (N.S.), i. 1365 sqq. *Republican*, iii. 72 sqq., 119; iv. 604 sq. The number prosecuted was vol. iii, No. 8, p. 264 (June 16, 1820), containing an open letter to a Bristol clergyman; it was sent to the H.O. by a correspondent, and was not purchased by the Treasury Solicitor until thus brought to his notice.

discussed, of whether publications recommending a definite and undoubted crime should or should not be classed with ordinary seditious libels which merely tended to cause disaffection. Carlile had written :

As I consider that the majority of the present Ministers are tyrants, and enemies to the interests and welfare of the people of this country, so also am I bold to confess that, if any man has suffered unjustly under their administration, should he be so indifferent about his own life as to slay any one or more of them, I would tune my lyre to sing his praises.

And again :

I consider it to be a want of virtue and true courage that makes a man seek companions to perform such an act. It is a proof that he calls upon others to do that which he has no resolution to do single-handed ; and, in seeking men that will co-operate with him he is sure to fall in with the most vicious of mankind and mar all the good he might have done as an individual. I condemn an association for such purposes.

The Chief Justice said to the jury :

I confess it appears to me that this is a direct invitation to His Majesty's subjects to assassinate the majority (without designating which) of those filling the office of Ministers to the Crown : and unless you are prepared to say that it is lawful to incite His Majesty's subjects to take away by their own hands the lives of those persons, it does not appear to me you can hesitate as to the verdict you must give.

Yet one wonders what sort of a man was likely to be turned into a murderer by the hope of having his praises sung by Carlile, and what sort of a man would be likely to have strength enough of will to commit such a crime without any confidant or accomplice. And what harm did this actual article do when it was published? Did it lead to any political murders? Was not Castlereagh's suicide just as suggestive? Had not Cobbett's joy at the assassination of Perceval, the prosecutor, had the same effect? Had Shakespeare's praise of Brutus had any bad results? If the idea was dangerous, every utterance of the idea at all, even as an abstract proposition, should have been prevented, if that were possible. Yet so far from doing anything so logical and so absurd the Government had allowed dozens of incitements to assassination to go scot-free during the trying times of 1819. The Attorney-General and the judges, and the jury and the people generally,

might say that the imprisonment of Mrs. Carlile was based on obvious common sense; yet it was but another sign that the Home Office did not administer the law regularly according to well-thought-out principles. It thought of persons rather than of principles; it looked at the question as one of political expediency rather than of law; it was blundering into a series of prosecutions under the delusion that the end of Carlile's business was not far off.

When Carlile heard of the indictment of his wife at the instance of the Society for the Suppression of Vice he boasted he would enlist against them the whole of his family and anyone else who would serve for a good bounty, good pay, and much glory.¹ "I have already a sister in the shop in training to oppose them, and I have another [person] whom I can command as soon as my wife and sister are defeated; by the time they have gone through the family I hope to be prepared to have another struggle with them myself." On this principle, when his wife was called up for her first trial, the nominal publication of the *Republican* was transferred to his unmarried sister, Mary Ann, who had no more sympathy with his views than his wife had.² This was specially necessary, as Mrs. Carlile might have been liable to banishment if she had been caught again at the counter.³

Early in 1821, when her sister-in-law had gone to prison, Mary Ann was indicted at the instance of the two prosecuting societies. The defeat of the new Constitutional Association's charge of seditious libel, owing to the aid she received from an eloquent barrister, has been recorded. But on that same day (July 24, 1821) she had previously stood for trial on a charge of blasphemous libel preferred by the old Society for the Suppression of Vice, and on this indictment she was convicted, partly because the crime alleged was religious and not political, partly because she tried to defend herself by reading a speech written for her by her brother, and partly because of the way this speech clashed with Mr. Justice Best's notions of propriety. The publication she was prosecuted for selling was an *Appendix to Paine's Theological*

¹ *Rep.*, iii. 80 (May 12, 1820).

² *Ibid.*, iv. up to p. 388 (October 20th), published by Jane Carlile; from p. 289—wrongly numbered—(October 27, 1820) onward, published by Miss Mary Ann Carlile.

³ *Ibid.*, iv. (October 27th).

Works, in which some of Paine's contributions to American newspapers were reprinted.

It has been circulated all over the United States of America [said the defence], and it appears to have done the inhabitants no harm there. . . . As there are some thousands, perhaps millions, in this country who are admirers of Thomas Paine, the different pieces have been collected and published here for their gratification and information. Something more than the ordinary bookselling price has been put upon them, and those who profess to dislike these writings are not compelled to purchase or to read them. The Printing-press is established upon too firm a footing to admit of any attempt to restrain effectually any particular opinions in the present days, and none but a rogue or a mad fanatic would think of or attempt it. Opinions will stand or fall, so far as they are related to truth or falsehood, and the utmost latitude of discussion can never become injurious to truth or honesty, or merit the epithet of licentiousness. I am bold to affirm that there is no other licentiousness in the Printing-press than where the grossest printed absurdities and superstitious notions are forbidden by law to be examined.

So far, so good; but it went on:

Gentlemen of the Jury, there is a Statute Law in this country which says that the books called the Holy Scriptures by the Christians should not be reviled or scoffed at, and the penalty which this Law enacts upon the first offence is a disqualification from all civil and military offices; but my prosecutors are too vindictive to rest their indictment upon this Statute, because that disqualification is not tantamount to two or three years' imprisonment. They have founded their indictment upon what they call the Common Law, but which, I shall make plain to you, gentlemen, is nothing but a common abuse . . .

Here Miss Carlile was interrupted by Best, who could not permit the laws of the country to be reviled in his presence. She said she had no other defence. He told her to take the manuscript and cut out the objectionable parts, or let her friends do it for her. "I have no other defence if you will not take that," she repeated. He told her there were plenty of gentlemen in Court who would help her cut the manuscript up. She then left the Court; but instead of removing anything she added something, and on returning she read out: "If the Court means to decide that an Englishwoman is not to state that which she thinks necessary for defence, she must abide by the consequences of such a decision." The Judge took her at her word and summed up against her.

Here was another "mock trial" like Davison's, in which a criminal libel-trial put both judge and defendant in positions which neither could hold in decency or abandon with dignity. Henry Cooper moved for a new trial, but the motion was not granted.¹ "She meant to defend herself against one blasphemy by uttering a hundred," said Best; but the shorthand report would have shown that the only blasphemy that was being uttered at the time of his intervention, was blasphemy against the Bench and the Common-law it had made.

Mary Ann Carlile was sentenced to pay a fine of £500, to be imprisoned in Dorchester Gaol for twelve months, to find sureties at the expiration of that time for her good behaviour during five years, herself in £1,000 and two other persons in £100 each, and to be further imprisoned until her fine were paid and her sureties provided.²

Thus by the end of 1821 three members of the Carlile family had been sent to Dorchester Gaol. For the last year the Constitutional Association had been active; yet it so happened that throughout that year Carlile had not been publishing his *Republican*. For the first year of his imprisonment Carlile had kept it going, "resolved to pay no heed to what are commonly called libels, but to make truth our helm and falsehood a rock to be avoided. Under the present system of government it is impossible to say what is liable or not liable to prosecution: therefore the most comfortable way is to laugh at prosecutions and go on." But his printer had been "cutting out all the best points in the *Republican* for the past year under the pretence that they were libels. . . . He has done us much mischief and not the slightest good, for we verily believe that the title of this work is the greatest libel in the eyes of the present Government."

By the end of 1820 he had had to drop it for many reasons.³ By then those who served in his shop had been at least bound

¹ *State Trials* (N.S.), i. 1033 sqq. H. Cooper's speech was reprinted (1856) in appendix to W. Cooper's *Sketch of his life*.

² Thelwall in the *Champion* (November 25, 1821), quoted Magna Carta: "That excessive bail shall not be required, nor excessive fines imposed," and spoke of Miss Carlile as a "helpless and therefore pitiable being," who ought to have been "regarded in the light of a pauper."

³ *Rep.*, iv. 605, 613 sqq. It is remarkable that, of Carlile's three hero-worshipping and ancestor-worshipping biographers, not one mentions this fact.

over to good behaviour, so that they could not serve again without losing their recognizances. Then there was a difficulty in finding venders in town and country. There was the difficulty of editing a weekly publication of thirty-six pages from a prison at such a distance from London. Moreover, "I am exposed to the mercy of half a dozen of Corruption's back-bone supporters in the character of visiting magistrates, who entirely control this gaol, and I know that they have been holding some grave synods about preventing my sending out any manuscripts for the press from this place." He expected either Representative Government or a Press-censorship before the next year was out. "A publication conducted strictly on republican principles is not altogether necessary at this moment, for a great majority of the people are fully alive to the necessity of the representative system of government, and, as to the abolition of monarchy, I do not wish to say one word about it." Such had been the effect of the Queen's Affair, among other things, upon Carlile the Republican. But the activities of the Constitutional Association now led him to resume his weekly publication.

2. WELLINGTON'S ASSOCIATION EXHAUSTED BY CARLILE'S SHOP ASSISTANTS, 1822.

When Carlile dropped the *Republican* he published only some small occasional pamphlets. Eight appeared during 1821, and five of these were prosecuted. This showed that the name of Carlile was now as provocative as the word *Republican*. "Nothing could please, whether mild or strong; so I instantly bid both the gangs defiance."¹

At the beginning of 1822 the *Republican* reappeared. Though never widely circulated, it became more influential than earlier volumes had been, and this increase in its importance corresponded with the development of its editor's personality. This was very noticeable in his religious beliefs; for, though he still called himself a Deist, he no longer shared Paine's abhorrence of Atheism: instead, under the influence of the newly translated *philosophes*, his belief in Nature as the great controlling force

¹ *Rep.*, vii. 445.

was growing.¹ Henceforth the very date of the *Republican* was an invitation for prosecution.²

The development of his political faith was just as marked. He was coming to believe more in evolution than in revolution, and in moral rather than in physical force. Though still believing "that the last step in the accomplishment of Reform must be that of physical force," he was glad now that the armed uprising which he had expected in 1819 and 1820 had not occurred.³ His great hope now was for union and unanimity achieved by the proper use of the Press and dispensing with all partial organizations, till "the great social whole that forms the country"⁴ should be permeated through and through with the knowledge of the rights of man.

There has never yet [he wrote] been anything like a knowledge and a union upon sound political principles in this country, and until this can be effected all attempts to reform had better be deferred. When the political principles laid down by Thomas Paine are well understood by the great body of the people, everything that is necessary to put them in practice will suggest itself, and then plots and delegate meetings will be wholly unnecessary. . . . In the present state of this country the people have no other real duty than to make themselves individually well acquainted with what constitutes their political rights, and to do this they ought not to remain unacquainted with the writings of Thomas Paine. In the interim, each individual ought to prepare and hold himself ready, as an armed individual, without relation to or consulting with his neighbours, in case circumstances should ever require him to take up arms, to preserve what liberty and property he may already possess against any tyrannical attempts to lessen them—or, from the force of a better knowledge and better principles, to assist in extending his liberty when the opportunity may offer. . . . Let each do his duty, and that openly, without reference to what his neighbour does, and we shall feel in quick time the force and power of a real union, upon principles unfettered with plan or scheme or meetings or money subscriptions. . . .⁵

¹ *Rep.*, v. 197. Baron Holbach's pseudonym of Mirabaud led to frequent confusion with Mirabeau. This probably helped increase his influence.

² "Now if you were in that country [U.S.A.], to put forth such a paper dated 'in the year 1822 of the Carpenter's wife's son,' you would, as surely as your name is Richard Carlile, be instantly dressed in a coat of tar and feathers, and in that dress be ridden bare-rumped upon a rail, till you dropped off by the side of some wood or swamp, where you would be left to ruminate on the wisdom (to say nothing of the modesty) of setting up for a maker of span-new governments and religions."—*Cobbett's Weekly Political Register*, xli. No. 5 (1822).

³ *Rep.*, vi. 591 sq. (October 4, 1820).

⁴ *Ibid.*, vii. 673 (May 30, 1823).

⁵ *Ibid.*, vi. 591 sq.

The Press was to prepare the way for the pike, and before revolution could be reached, the long road of individual improvement, through the progress of the knowledge of human rights and wrongs, would have to be travelled. But Carlyle was convinced that man was already well on the way, driven forward under the impulse of the spirit of search and of striving that was innate in him.

The progress of error seems to have passed its zenith, and to be receding before the zetetic disposition of mankind. The distresses that have arisen from that progress, having been accompanied with an increased intellectual force from the joint powers of the Printing-press and National Education, have opened the era of sentiment,¹ and the expansive power of knowledge is beginning to put down the fopperies and fooleries, both of governments and of individuals, of monarchy and of aristocracy. . . . The right to rule is universally disputed, and a sense of the importance of Representative Rule is as universally called for. Thus opens the era of Liberty. . . . That real Liberty is productive of humanity and morality is everywhere to be seen. . . . The courts of Europe are not half so corrupt, so magisterially corrupt, as they were a century since, and kings themselves are almost brought to a consciousness of wrong by the power of popular knowledge, or what we now term the zetetic principle of mankind. Laws made to restrain this knowledge, this zetetic principle, are powerless and dead-born. . . . Like manure to vegetation, corruption seems to nourish intelligence instead of destroying it, and the distresses it occasions become the energetic or stimulating power of its growth. Let us then endeavour to progress in knowledge, since knowledge is demonstrably proved to be power. It is the power of knowledge that checks the crimes of cabinets and courts; it is the power of knowledge that must put a stop to bloody wars and the direful effects of devastating armies.²

When Orator Hunt criticized him as pamphlet-dealer, he rejoined:

Be assured that it is pamphlet-reading that is destined to work the great necessary moral and political changes among mankind. The Printing-press may be strictly denominated a Multiplication Table as applicable to the mind of man. The art of Printing is a multiplication of mind, and since the art is discovered, the next important thing is to make it applicable to the means of acquirement possessed by the humblest individual

¹ Sentiment appears to mean feeling of approval or disapproval; opinion as to what is right and advantageous.

² *Rep.*, v. 513 (April 26, 1822). Similarly, Leigh Hunt, *Captain Sword and Captain Pen* (1835). Carlyle published medical works so as to make every man his own physician as well as his own priest and his own lawyer. "The first of my principles is, *Educate, reform yourselves.*"—*Rep.*, ix. 673 sq.

among mankind, or him whose means are most scanty. Thus it is evident that a compression of sound moral truths within pamphlets, as the smallest and cheapest forms of giving effect to this multiplication of mind, is most conducive to the general good, and future welfare, of mankind. Give this a thought, and do not treat pamphlet-vending with contempt again. . . . Pamphlet-venders are the most important springs in the machinery of Reform.¹

Similarly, in writing to some Sheffield basket-makers:

Mankind in the future will owe all their social benefits to the Printing-press, and it is known to me that, where an individual addicts himself to mental improvement, he abandons the immoralities that would otherwise engage his attention.—The Alehouse, I know, has charms insuperable to the great body of mechanics.²

Carlile shrank from no consequences of his idea of Progress with the Press as its mainspring:

Free Discussion [he said] is the only necessary Constitution—the only necessary Law to the Constitution.³

The Printing-press has become the UNIVERSAL MONARCH, and the Republic of Letters will go on to abolish all minor monarchies, and give freedom to the whole human race, by making it as one nation and one family.⁴

It was with these ideas running through its numbers that the *Republican* reappeared in 1822 (January 4th). Its aims were new ones for Carlile: it was to focus all British republican sentiment and make British republicans acquainted with each other; "to form a phalanx around myself, such as shall be strong enough to support me whilst I put in practice the common right of Free Discussion"; and to help supply him with the means of quitting his prison triumphantly when his three years should end. The first of these aims was not unattained. He was soon in correspondence with little groups of freethinkers and republicans all over the land.⁵ In some places they formed Zetetic Societies for regular

¹ *Rep.*, v. 279 (March 1, 1822).

² *Ibid.*, 391 (August 23, 1822).

³ *Ibid.*, viii. 3 sqq. (July 11, 1823), reviewing Cartwright, *English Constitution Produced and Illustrated*.

⁴ *Ibid.*, vi. 449 (September 6, 1822), on the approaching Congress at Verona, "for the purpose of devising in concert new measures to arrest the progress of knowledge."

⁵ *Ibid.*, v. 233, etc., vi. 358 sq., 704. J. Gale Jones and Rickman were prominent at London; J. Russell at Birmingham; J. Watson at Leeds; Drakard at Stamford.

Sunday reading and discussion.¹ In some Carlile's birthday, like Paine's, was celebrated and his health drunk.² In London a committee of his friends sat at his shop an evening a week to receive subscriptions.³ About £500 a year was henceforward contributed to his work.⁴

In his first and last appeal for general public support (August 1821) he said:

Money is the sinew of this as well as a less honourable warfare, and R. C. feels assured that one-tenth part of the money which those two Societies will have to spend will enable him effectually to defeat the whole gang.⁵

By dint of personal bravery [he proclaimed] we will put down these associations. The money they raise and spend shall be so much money spent for the propagation of Republican and Deistical principles. Every trial is equivalent to the circulation of a hundred thousand of my publications, and with this conviction on my mind I am delighted with the game.⁶

He was disgusted with Brougham's failure in defending Ridgeway.

I'll fee no more lawyers [he said]; every individual arrested or brought to trial shall make his or her own defence in person, and no further prosecution shall necessarily cost me a farthing until the individual prosecuted be in prison; then he or she shall share whatever comforts I can obtain. This is the economical plan upon which I shall proceed in future. I will relinquish the sale of no one prosecuted pamphlet until it is out of print, and I will weekly add to the number, if the gangs will proceed.⁷

The struggle between the prosecuting-societies and Carlile's shop assistants had already begun. The example of Carlile's

¹ *Rep.*, vi. 393.

² He did not altogether approve, preferring less sensual celebrations and more homely eating and drinking. A typical toast was: "R.C., the Champion of Free Discussion, and may every Christian remain in purgatory while he is in prison."—vii. 86, 177, 217; v. 34 sqq.; vi. 447 sq.; ix. 161, 232. Also *American Independence Day*, vi. 309.

³ *Rep.*, v. 62 sq.

⁴ *Ibid.*, vi. 704, ix. 449. Most subscriptions were small; but some admirers "committed their sovereigns to gaol."—*Ibid.*, x. 64. Carlile very much objected to Orator Hunt's "Northern Union," as it aimed at "purchasing seats from boroughmongers" for the benefit of would-be M.P.'s instead of enlightening the people and supporting the families of imprisoned Reformers.—*Ibid.*, v. 651.

⁵ Copied, *ibid.*, ix. 450, with the remark, "Good intent knows no shame."

⁶ *Ibid.*, v. 11.

⁷ *Ibid.*, 12 sq.

womenfolk had inspired other volunteers whom Carlile had never known, and to these complete strangers he entrusted his business.¹

A week before the *Republican* reappeared there was a placard in the window of his shop: "Two shopmen arrested this afternoon, without knowing their names, by the Bridge-street Gang. The same 'obnoxious pamphlet' shall be sold in spite of them: 'tis a right noble cause: they shall not, with all their combined powers, shut up the TEMPLE OF REASON. O base gang! You will do no harm to the cause, but good. This is the mart for 'sedition' and 'blasphemy.'"²

The first arrest was that of a seventeen-year-old printer (John Barkley). He was tried at the Old Bailey before the Common Serjeant, whose resemblance to Judge Jeffreys had won him the nickname of "Little Jeff." M. D. Hill tried to defend him, and the Common Serjeant took forty minutes replying to his "ranting folly" and "wild, idle, and absurd arguments." After all, the jury deliberated over half an hour, and they could hardly have done more, as they themselves had convicted another man of the very same libel on a previous day. Barkley was sentenced to six months' imprisonment, to which hard labour was later added.³

The same day a Manchester man named Joseph Rhodes was arrested while serving in Carlile's shop. He refused to give his name. A police officer swore he was Holmes, and the Common Serjeant persisted in trying him under that name. Four of his jury were said to be booksellers. He received two years' hard labour.⁴

¹ "Had Mrs. Carlile flinched, my business would have gone to wreck, for I verily think that there would have been no volunteers but for Mrs. C. and my sister going one after the other. It gave a sort of zest to the thing, and everything has gone well since."—Carlile to Holmes (May 1824), in T. C. Campbell, *op. cit.*, 86.

² *New Times* (December 29, 1821); *Rep.*, v. 12, 56; witness in *R. v. Holmes*. Placard by J. W. Trust, December 28, 1821.

³ Trial, March 4, 1822. Petition to Commons, March 27th. *Rep.*, v. 321. *Report* (publ. Effingham Wilson), with a motto from Milton: "But some are ready to cry out: 'What shall be done to blasphemy?' These I would first exhort not thus to terrify and pose the people with a Greek word, but to teach them better what it is." Letter, M. D. Hill to Roland Hill: "I cannot even now think of the monsters without my blood boiling in my veins."—R. & S. Hill, *The Recorder of Birmingham, a Memoir*, p. 55.

⁴ *Rep.*, v. 243, 321, 450. One bookseller was Blanchard (Methodist), of City Road and Paternoster Row. "There was also Gardner, the bookseller to the Oxford University and the sole agent in London for their Bibles! . . . If he had acquiesced in a verdict of Not Guilty he would have lost all his Oxford agency, and perhaps his sole means of living with it."—*Ibid.*, 450.

William Vamplew Holmes, whose name also was unknown, was arrested two days later. He had once been a Methodist local preacher, and he had been imprisoned on a previous occasion for selling some publication of Griffin's during the Queen's Affair. He was, therefore, the first man liable to banishment under the Six Acts; but he had luckily pleaded to the name of William Vamplew. He defended himself, and the Common Serjeant took two hours to sum up. He was sentenced to two years' imprisonment in the Giltspur-street House of Correction, and the Common Serjeant told the governor, after Holmes had been taken there, that if hard labour was not expressed in the sentence it was implied.¹

A Radical alderman, calling at the Compter as a magistrate, found these men at flax-beating, a dirty, unwholesome kind of hard labour, and he had the kindness, when they complained of it, to order Holmes and Rhodes to be provided with materials to follow their proper business of shoe-making, and Barkley to be set to any kind of light employment that might come to hand.²

While these shopmen were awaiting trial events at Carlile's shop were not standing still.

To prevent the Association arresting every shopman by a warrant, without waiting for a True Bill to be found, all works which had been made the object of prosecution were sold from the parlour behind, through a small hole in a screen.³

On February 5, 1822, a large posse of police officers surrounded the shop at 55, Fleet Street; they entered it with a warrant to seize everything as an *extent in aid* towards the payment of fines, and they accordingly took everything they could.⁴ But this did not end the business. At the end of next month the *Republican* announced the resurrection of the "Temple of Reason": "After being buried for the space of six weeks under the filth

¹ Trial, March 1, 1822. *Report*, publ. Holmes (Sheffield, 1824). *Rep.*, v. 289. Many letters in T. Carlile Campbell, *op. cit.*, pp. 84 sqq. Holmes had sold *An Address to the Reformers of Great Britain* (dated June 24, 1821). Sherwood, bookseller of Paternoster Row, is said to have been of the jury.

² *Rep.*, v. 449, on Alderman Wood. It was also complained against the Common Serjeant that, though Judge at Old Bailey, he was counsel in other courts, and was therefore interested in gaining the good will of the secretary-solicitors of the prosecuting-societies.

³ *Annual Register* (1822), p. 4; *Rep.*, v. 56. The shop, 55, Fleet Street, was roughly where the *Glasgow Herald* office now stands.

⁴ *Rep.*, v. 257.

and mire of Legal Robbers, the 'Temple of Reason' will again rise into existence, in all its wonted splendour, next week, where the whole of Mr. Carlile's Works may be had, at No. 5, Water Lane, five doors from Fleet Street."¹

Carlile had numerous offers of volunteers, both in London and in the country, and if arrests should again become too numerous, the last surviving assistant could retire behind the screen till help arrived.² In fact, the screen itself was made an object of attraction: it was transformed into a dial, on which were written the names of all publications for sale; there was also a hand to the dial, and the purchaser would turn it to the name of the work he wanted; then, on depositing his money, the publication would be dropped down before him as if by clockwork.³

More arrests followed. Another "man with name unknown"—Humphrey Boyle, a self-taught Leeds man who had been a flax-dresser—was prosecuted at the instance of the Constitutional Association. "Little Jeff," the Tory, had ceased to be Common Serjeant; so Boyle was tried before Denman, the Whig, whom the City had put on the Bench because of his defence of the Queen. He allowed Boyle to read all the most obscene passages in the Bible, but turned the women and boys out of Court while they were being read. Denman left the case entirely to the jury. They found the defendant Guilty, and he was sentenced to eighteen months' imprisonment in the Compter.⁴

Four of Carlile's shopmen, besides Ridgeway, who was one of his Manchester agents, had thus been imprisoned on account of the "Bridge-street Gang." Besides these it had obtained convictions against two men for selling Dolby's *Political Dictionary*, one of whom was the publisher himself, and the other a seventy-year-old Manchester shopkeeper,⁵ neither of whom was sentenced. There was also a poor boy, who, it was said, had been proved not to have known what it was he had been selling.⁶ "The

¹ *Rep.*, v. 416.

² *Ibid.*, 418 sq., 431 sq. Also in R. v. Tunbridge, 1822.

³ *Ibid.*, v. 481 sq. Carlile's harmless exaggeration gave rise to the legend that his publications were actually sold by clockwork, as by a modern automatic chocolate machine.

⁴ Trial, May 27, 1822. *Report*, publ. Carlile 1822. *Rep.*, vi. 42 sqq., 103, 189; viii. 155. W. J. Linton, *James Watson*, p. 15.

⁵ John Reddish was dragged up to the Lancaster Assizes and pleaded Guilty because the Association promised not to call him up for judgement.—*Lancaster Gazette* (April 13, 1822).

⁶ Charles Saunderson.—*On the Law of Libel*, p. 52.

sum subscribed to the Constitutional Association (so some of them have boasted) amounts to upwards of *fifteen thousand pounds*, and we have reason to believe it has been all spent or wasted. Nearly *eight thousand pounds a year* has been got rid of, and yet after all the shameless attempts to entrap people it has caught but eight." "A more infamous association . . . never existed," continued Francis Place. "We do not, however, believe that the conduct of this vile body will be found to have done any general mischief, since it is only by such efforts as it has made that the people are at length aroused to amend those laws which are inimical to the interest of civilized society."¹

The lawyers had prevented the Association from doing its work. Carlile and his shopmen had given it work to do. Bar and Bench, Press and juries, had all helped to discredit it. Carlile and his shopmen had snowed it under with weekly libels and had finally helped to drain its treasury dry. The end of 1821 and the beginning of 1822, he boasted next year, with not a little exaggeration,

were memorable for the stand I made against the Bridge-street Gang, in the persons and through the aid of my friends. I am not at all ashamed to boast and say that had it not been for my shop and shopmen and women that Gang would have carried everything before them in their designs on the Press. I caused them to waste nearly all their means without doing me the least injury, and this has paralysed the Gang. Their institution and prosecutions have, in fact, done me a real service, for ever since they commenced the tide of prejudice has been turned, and is still ebbing fast from me to those who are the persecutors.²

Still more unbounded was his exultation when he read rumours in the newspapers that the Constitutional Association was defunct after spending £30,000:

Thirty thousand pounds! What has this Association done? Why, it appears they have put five of my agents in prison for selling four sixpenny and one twopenny pamphlet, and this at an actual expense of six thousand pounds a man for them! Glorious work to suppress sedition and blasphemy, which is now running in a current ten times as strong as when they began to annihilate it! GLORY TO THE OMNIPOTENT PRESS! I tell Jehovah to his face that I will worship no other God but the Printing-press! To that great power I will offer my matins and my vespers, and live alone for its glory and to exhibit its powers omnipotent!³

¹ *On the Law of Libel*, p. 51.

² *Rep.*, vii. 681 (May 30, 1823).

³ *Ibid.*, vi. 226 (July 19, 1822).

3. WILBERFORCE'S SOCIETY TIRES OF PROSECUTING CARLILE'S SHOP ASSISTANTS, AND THE JUDGES TIRE OF TRYING THEM, 1823.

Carlile and his shop assistants must have had some hope of driving the Society for the Suppression of Vice out of existence at the same time as the Constitutional Association. The obloquy incurred by the latter might reflect on the former. The men and women who volunteered to be arrested by one might be, and must be, exposed to both.

In the summer of 1822, for the first time, Wilberforce's Society failed to obtain a conviction in a case of libel. The acquittal of William Benbow was all the more remarkable because the charge against him was obscene and not blasphemous libel. Impoverished by ten months' imprisonment by the other Association, he had left his large shop in the Strand and had set up again near Leicester Square. When the Constitutional Association had failed to drive him out of the trade, the Vice Society tried what it could do. It objected to some love stories and songs and pictures in his *Rambler's Magazine*, and also to a French novel published in sixpenny parts. It was proved that the novel had been translated into English over thirty years before, and that it was obtainable at all the great circulating libraries, and it was taken for granted that such songs and pictures were not unknown among supporters of the Society for the Suppression of Vice. The Chairman of the Sessions told the jury they were the sole judges of the case, and they quickly acquitted the defendant.¹

When common productions which disgusted Carlile and most other Radicals were acquitted, it was remarkable that charges of blasphemous libel should still be acceptable to juries.² When

¹ Trial, July 11, 1822. Report copied into *Rep.*, vi. 228 sqq. from *Rambler's Magazine*, which is not in the British Museum.

² "It is by no means a credit to us that such a work should emanate from a publisher who is in other respects an avowed publisher of Reform publications. It professes to be a collection of amatory cases . . . with all such matters as are calculated to incite public curiosity by their wantonness and excess. Such publications are evidently mischievous to public morals. . . . I condemn them, and I regret that they should emanate from the same shop as the works of Paine and Lawrence."—Carlile, *ibid.* William Lawrence was a very distinguished surgeon; his lectures on anatomy were printed and pirated, and the Lord Chancellor refused to protect the copyright because he considered Lawrence's scientific views to be blasphemous; Carlile then published the condemned work, and Lawrence returned the compliment by attending Carlile during his last illness.

Carlile's volunteers challenged the Vice Society, they did not go unprosecuted. They became bolder than Mrs. and Miss Carlile had been: the *Report of the First Day's Proceedings* against Carlile, containing the whole of the *Age of Reason*, was now completed.¹ An eighteen-penny pocket edition of Paine's *Age of Reason* was issued for the first time.² The Koran was published in threepenny numbers.³

Only a few days before the defeat we have mentioned the Society for the Suppression of Vice brought another woman to trial. This was a Mrs. Wright, a Nottingham lace-worker who had come and taken her place in Carlile's shop, and who there sold the two twopenny *Addresses to the Reformers* for which she was prosecuted.⁴ At her trial before Chief Justice Abbott she had the whole of them read, including a letter from a clergyman as well as Carlile's reply, and she was allowed to read W. J. Fox's sermon on the *Duties of Christians towards Deists*. The Judge was scrupulously fair; but the jury heard her with impatience and convicted her.⁵ Four months later, in mitigation of punishment, she read a plea of Carlile's that Christianity could not be part of any human law, and for this "blasphemy against the law" she was committed to Newgate, on a cold November night, with a six-months-old baby and nothing to lie on but a mat.⁶ Ten weeks later she was again brought up for judgement, she again

¹ *Rep.*, v. 448, 576. 5000 were printed; the whole report cost 2s. 6d.

² Not in the British Museum; but see *Rep.*, vi. 288. 5,000 were printed. Part I cost 6d.; Part II, 1s.; also the so-called Part III, 9d.—*Rep.*, vii. 650.

³ *Rep.*, vi. 64, 112, 189.

⁴ *Addresses* dated March 3rd and April 23rd of the second year of the Spanish Revolution (1821).

⁵ Susannah Wright, tried July 8, 1822. *Report*, publ. Carlile, 1822. *Rep.*, vi. 160, 213 sqq., 294 sq., 305, 407, 416; xii. 674; vii. 175.

⁶ "This wretched and shameless woman, who is a relation and confederate with the notorious Carlile, had been found guilty of publishing a blasphemous libel, and she was brought up for judgement, 'attended,' says the *Morning Chronicle*, 'by several females.' Are not these circumstances quite enough to shock every reflecting mind? Has anything like them ever been known before the present times? Blasphemy from any lips is shocking, but from those of a female it is beyond expression horrible. And yet here is not only one abandoned creature who has cast off all the distinctive shame and fear and decency of her sex, but her horrid example has depraved the minds of others, who are perhaps already the mothers of families, or to whom the temporal and eternal happiness of a future offspring may be committed; and these monsters in female form stand forward, with hardened visages, in the face of day, to give their public countenance and support—for the first time in the history of the Christian world—to gross, vulgar, horrid blasphemy."—*New Times* (November 16, 1822).

urged the same plea, was again silenced, and was sentenced to eighteen months' imprisonment and a fine of £100. Both the forbidden and undelivered speeches were, of course, published in the *Republican*, the second of them on the very day after the Judges had refused to hear it.¹ She was "a woman of very delicate health, and truly all spirit and no matter," and she had eventually to be released a month before her sentence expired and without payment of her fine.²

"This game shall never cease as long as you cease to be ashamed of having such cases before you," said Carlile.³

Another shopman, William Tunbridge, was arrested by the same Society for selling Palmer's *Principles of Nature*, for which Carlile had been punished. At his trial he announced that the book "was an attack on the Holy Scriptures and the Christian religion, and that he intended to read it in Court," and the Chief Justice rightly refused to have it read for any other purpose than to prove that it did not mean what the indictment alleged. Tunbridge received two years' imprisonment, living on bread and gruel; and the suppressed part of his defence, containing the whole of Palmer's essay, was on sale in threepenny sheets a few weeks later.⁴

On March 26, 1823, the House of Commons discussed the Society for the Suppression of Vice for the first time.⁵ A year before, Hobhouse had refused to present a petition on behalf of

¹ Brought up for sentence November 14, 1822, February 6, 1823. *Annual Register* (1823) chronicle, p. 18. *Rep.*, vi. 801 sqq., vii. 161, 174; x. 63 sq. Letter from Carlile to Holmes (July 22, 1822) in Campbell, *op. cit.*, pp. 88. "The *Republican* of November 23, 1822, will contain the whole of the suppressed speech of Mrs. Wright to show the Judges of the Court of King's Bench that they have no legal power to issue a *veto* to prevent the printing and publishing of anything, whether spoken in or out of their presence."—Poster in Place Collection, XXXIX, ii. 254.

² *Rep.*, x. 63 sq.

³ *Ibid.*, vi. 305.

⁴ Trial, January 20, 1823. *Report*, publ. Carlile, 1823. *Rep.*, vi. 515; vii. 163, 193 sq., 226 sq.; 344 sqq., 800. *State Trials* (N.S.) i. 1369; also 1370, a reference by C. J. in *Cooke v. Hughes*. Tunbridge was of a very independent disposition, and received no help from or through Carlile.—*Black Dwarf* (January 7, 1824); *Cobbett's Register* (May 1, 1824); *Rep.*, ix. 609 sq. (May 7, 1824); and cuttings in Place Collection, XXXIX, ii. 307 (February 28, March 5, 1823).

⁵ *Hansard*, viii. 709–35. *Morning Chronicle* (March 27th), *Scotsman* (April 2nd). *Rep.*, vii. 417 sqq.: "It is the first debate in the Parliament on the question of Free Discussion, and even the first agitation of such a question in that quarter." It was the first Parliamentary debate ever reported in the *Rep.*

Miss Carlile.¹ At last, however, it was presented by Joseph Hume. He said that no list of subscribers to the Society had been published for twenty years. Far stronger controversial works had been published during the eighteenth century without being punished, and the principle of severity in religion was hardly known fifty years before. He pleaded for a clear and easily understood law, not unlike that prevailing in some American States, instead of prosecutions founded on the *ipse dixit* of Hale, the witch-burner. Fines and bail were being imposed, as excessive as any imposed by James II; the security alone demanded of Mary Ann Carlile was as large as that recently demanded of a bishop who was worth £100,000, although she had lived by the work of her own hands ever since she was fifteen, and had no property besides her clothes, a few books of little value, and furniture enough for a single small room. Ricardo spoke in the same sense:

Prosecutions ought never to be instituted for religious opinions. . . . All religious opinions, however absurd and extravagant, might be conscientiously believed by some individuals. Why, then, was one man to set up his ideas on the subject as the criterion from which no other was to be allowed to differ with impunity? Why was one man to be considered infallible and all his fellow-men as frail and erring creatures?

William Wilberforce himself rose, along with other Evangelicals, to defend religious prosecutions in general and the Society in particular. Ricardo, he said, "seemed to carry into more weighty matters those principles of free trade which he had so successfully expounded." The examples of Athens, Sparta, and Rome—none of which happened to have been Christian States—showed that "ours was the only free country which had ever existed in which there was no special tribunal for the protection of religion and morals." Our nearest approach to a regular *censor* was the Attorney-General; "if such offences as [Miss Carlile's] were not to be visited by the arm of the law, the learned gentleman opposite might as well be absolved from all care of the public morality and religion, and everything be suffered to go to wreck and ruin."

The Attorney-General was not sorry to be relieved of the duties of *custos morum*:

¹ Broughton Correspondence in Brit. Mus. Add. MSS. 36459, ff. 228, 231, 232; *Rep.*, v. 564 sqq.

Hard, indeed, would be the case of any Attorney-General who should take on himself the prosecution of all persons who had spread blasphemy, indecency, and immorality through the different parts of the country.

Mr. Secretary Peel, however, in his love of law and order, did not shrink from his responsibility:

The law of the country made it a crime to make any attempt to deprive the lower classes of their belief in the consolations of religion, and while this law remained unrepealed he should think himself wanting in his duty if he shrank from applying and enforcing it.

Wilberforce's society instituted no more Press-prosecutions. Eight months later the Crown extended its mercy to Miss Carlile. But signs were not wanting to suggest that Peel intended to take upon himself the suppression of anti-Christian publications. The Home Office did at least prosecute a few sellers of works of which other copies had previously been found blasphemous.

Carlile's men took another shop in the Strand, which was then the chief "street of ink," and there the police arrested young James Watson (1799-1874),¹ who had just come up from Leeds, and who was to be prominent in all the democratic movements of the next twenty years and in the popularization of Erasmus Darwin's conception of evolution.² He was tried for selling Palmer's little book, not before King's Bench, but in the comparative obscurity of the Clerkenwell Sessions on the adjournment day when no reporters were present. For several hours he tried to justify Palmer out of the Bible, till the Chairman refused to hear comments on the Scriptures. Then, after repeating all the stock arguments against restrictions on the search for truths, he couched the written gist of his defence in a novel, though not strictly legal form, in reference to the Bow-street detectives who had purchased the work from him:

You cannot return a verdict of Guilty . . . without being yourselves guilty . . . of perjury . . . You are a jury impanelled to try . . . whether I sold that volume . . . with a malicious intention towards the man who alone appears before you as a witness to say he bought it of me. . . . Do you find that I went into the street to solicit, with a malicious intention, that police officer to buy the volume . . . from me, for the

¹ W. J. Linton: *James Watson: a Memoir of the Days of the Fight for a Free Press in England, and of the Agitation for the People's Charter* (1879).

² *Rep.*, viii. 653.

purpose of changing his opinions or corrupting his mind? or do you find that he came into the shop of my employer to solicit me, as a shop-man there employed, to sell him that particular volume? Why, gentlemen, he came as a perfect stranger to me, and, in a civil and apparently friendly manner asked me to let him have the volume. . . . The volume in question was maliciously bought, but not maliciously sold by me. . . .

The volume in question is charged to be an attack upon the Christian religion; it is not charged to be an attack upon any man's character, nor calculated to do a private or moral wrong to any individual. . . . The *law* has no application or relation to anything but *property*, and to whatever is not a property you cannot apply it. . . . Life is a property, liberty is a property, health is a property, character is a property—all touching the private interest of every man—and law is intelligibly applicable to all these possessions. . . . But religion is like none of these things, and no law can apply to it. If it can be fairly called an acquirement or possession, it is such as no man can be deprived of without his consent and desire, and consequently no such man can complain of injury done him.

He was sent to Coldbath Fields for one year, and had to give security for two.¹

A man who had set up for himself at the corner of Newgate Street after working for Carlile, was also prosecuted for selling Palmer's same book through a hole in the ceiling of his shop. When pleading to the ex-officio information that the Attorney-General had filed against him, he asked the Judge what blasphemy meant, and was told to seek legal advice. At his trial he told the King's Bench they were not competent to try him for a religious offence, and they said they were. He read the *Principles of Nature* till he reached Palmer's statement that the book was an attack on Christianity, and the Chief Justice and the jury stopped him from proceeding farther. He alleged that his jury was picked; but the Court refused to hear argument in support of that affidavit. The King's Bench was becoming tired of blasphemy trials. In addressing the jury the Chief Justice said he hoped the period was then fast approaching when those publications would lose, as he felt they were losing, their attraction for the innocent and industrious classes; and he congratulated the jury on the prospect that this might possibly be one of the last efforts they might have to make in defence of the insulted laws and religion

¹ Trial, April 24, 1823. Counsel for prosecution: Bolland the bibliophile. *Rep.*, vii. 594 sqq. Linton, *op. cit.*, p. 16 sq.

of the country.¹ "If this be a true report I understand it all very well," wrote Carlile. "It may be the last prosecution."²

Carlile was not far wrong. Next day, when the *Republican* appeared with a report of the speeches Trust had not delivered, another man who had been a shopman of his was tried for selling some anti-Christian *Observations on Dr. Olinthus Gregory's Letters* to a Vice Society agent nearly two years before.³ The counsel for the prosecution said this was a most scandalous libel. The Chief Justice told the jury it was so unquestionably blasphemous that he was sure no counsel could be prepared to defend it. But no witness appeared to prove the sale of the work. The defendant's admission that he had sold it was legally unacceptable. A verdict of acquittal had to be recorded.⁴

By now Carlile's friend had got him a new "Temple of Reason" at 84, Fleet Street, near St. Bride's. There they published Palmer's *Principles* at two shillings, and he was able to announce paradoxically:

When we publish at very low prices, to suit the pockets of the poor with our moral publications, we find the Vice Society and the Attorney-General do not prosecute. We are just beginning to understand what they want.

At the same time he published a fine little pocket volume called *The Moralist* in twopenny numbers, partly perhaps to prove that opposition to the established religion did not imply immorality, but mainly "to war with popular vices" in the conviction that "the first principle in all reform must be first to reform ourselves."⁵

Carlile's morality was hardly of the life-giving kind that would nerve "the vicious part of the community" in the war against vice; but his religion, his faith in progress and the Press, his own example in suffering for the sake of his cause, had inspired many

¹ Trial of J. W. Trust, October 30, 1823. *Rep.*, vii. 593, 774 sq.; viii. 532 sqq.

² *Rep.*, viii. 547.

³ Gregory was a distinguished Nonconformist teacher of mathematics, and later the biographer of Robert Hall the Baptist. He rose in Carlile's estimation when he opened a mechanics' institute at Deptford in 1825.—*Rep.*, xii. 727.

⁴ John Jones, arrested December 3, 1821, imprisoned two months, released, brought up for trial October 31, 1823; counsel for prosecution, Gurney.—*Rep.*, vii. 776; viii. 478 sq., 548 sq. It is possible, though not very probable that Jones was acquitted by collusion, on the understanding that he should attack Carlile later.—*Bull Dog* (1826), pp. 111 sqq.

⁵ *Rep.*, viii. 288, 576; *Moralist*, from September 26, 1823 on.

like-minded working men and women with confidence in the triumph of their cause over the Society for the Suppression of Vice. In that hope they fought; in that faith they conquered. The sellers of Radical publications had exhausted Wellington's Association, and now Wilberforce's Society had at last seen the futility of prosecuting the enthusiastic venders of anti-Christian works. By their importunacy these men and women had worn out the patience of the Judges of the highest Criminal Court. Only the Home Office remained to continue the Battle of the Press, and only the lower Courts remained in which to wage the fight between Carlile's shop assistants and the Government of the country.

4. THE HOME OFFICE'S PYRRHIC VICTORY OVER THE "HONOURABLE HOUSE OF MORAL BLASPHEMERS," 1824.

For eight months there was peace in Fleet Street. There every prosecuted book was publicly displayed and sold openly. The "captives of the Compters," fulfilling their terms of imprisonment, came out one by one.¹ W. V. Holmes and his wife went up to Sheffield and commenced the open sale of Carlile's publications there and in the market towns around.² Only in Edinburgh was there any disturbance. There a bookseller and grocer, James Affleck, was arrested, and his books were seized. He was indicted in the High Court of Justiciary for selling Paine's *Age of Reason*, a translation of a Chinese prayer, a book on the character of Jehovah and the prophets, and an open letter addressed to the Chief Rabbi, in the *Republican*. He was also indicted for selling Shelley's *Queen Mab* and some publications of the Edinburgh freethinkers' Zetetic Society. If he had defended himself he might have been transported; so his counsel prudently said that it was the prisoner's ignorance that made him trade in books that were sold in the most respectable bookshops, and that he had abandoned book-selling. He therefore received only three months' imprisonment,

¹ *Rep.*, viii. 608; ix. 411 sq.

² *Ibid.*, ix. 549 sqq. Perhaps Holmes went to that part of the country partly because about 1822 a gentleman living near Chesterfield had had to pay heavy costs to stay a prosecution by the local clergy, when he had circulated a privately printed extract from the *Deist*.—*Rep.*, xi. 351; xii. 158. Samuel Bailey and Ebenezer Elliott lived and worked in the same locality.

and by the end of May 1824 the storm in Scotland had blown over.¹

By then, however, it was raging in London with considerable force. The Treasury Solicitor was making a last attempt to close the new "Temple of Reason." No less than eleven arrests were made in Fleet Street between the 7th and 31st of May. It was the best organized and most systematic offensive that was launched against the shop. The reason for the renewal of the prosecutions was apparently a complaint to the Home Office, ten weeks before, by the magistrates resident around Dorchester, to the effect that they apprehended serious evils, particularly in their own neighbourhood, from the continued circulation of Carlile's publications.²

A man named William Campion had been serving in the shop since September 1823, and had sold about a thousand copies each of Paine's *Theological Works* and Palmer's *Principles of Nature*. Then on Wednesday, May 5, 1824, a Bow-street patrol bought from him a two-shilling Palmer and a four-shilling Paine. On the Friday, Campion was arrested by a City marshalman, and next day he was sent to the Compter till he could find bail.³ There were soon some volunteers ready in London. The first was a Thomas Jefferies, and he was arrested almost immediately. Next came a boy named James Moffatt, who had been employed by Carlile for nearly two years; his grandfather, a "materialist" who used to write in the *Republican*, undertook by recognizances to keep him away from the shop. That same Saturday, a week after his first arrest, Campion was again arrested on a warrant in consequence of having been seen speaking to someone in the shop while the boy sold the books to a Bow-street patrol.

¹ Seizure February 20th, trial May 31, 1824.—J. Borthwick, *Treatise on the Law of Libel*, p. 69 sq.; *Rep.*, x. 132, 322 sqq., 372 sqq., 411 sqq., 439 sqq. "In Scotland, the defendant, in such cases, is furnished with a printed copy of his indictment [including quotations]; and so fearful were the Law-officers in this case that the printer would print some for distribution, that they sent a person to watch the process and to see the formes broken up. Why? We can copy."—*Ibid.*, p. 324.

² H.O., 49. 7, pp. 243 sqq. Henry Hobhouse to George Maule (February 23, 1824). There is no complete set of correspondence between the Home Office and the Treasury Solicitor; therefore I cannot be sure that there was no other reason for the prosecutions. "There are about 20 *Republicans* a week well read in this town now, which I consider a smart circulation for such a place."—Carlile to Holmes (Dorchester, October 11, 1825) in T. C. Campbell, *op. cit.*, p. 95.

³ *Rep.*, ix., 632 sq., 759 sq. *New Times* (May 10th).

The following Monday morning one John Clarke went to open the shop, and was arrested that same day for selling a number of the *Republican* (vol. ix. No. 17) which said that nearly all the characters spoken of in the Bible were very immoral men. Through inability to give bail in £200 he was sent to the Compter. He was followed by John Christopher, a young Unitarian who had lately come from Liverpool. Then Richard Hassell, a Dorset farmer's son, who had been attracted from Cerne to Fleet Street by Carlile's imprisonment in Dorchester, came into the shop: at midday on Friday he refused to sell the *Age of Reason*, as he was there only to keep the shop open; but he told the patrol to call again in the afternoon. He did, and he then found another young man named William Haley in the shop. From Haley he bought the current number of the *Republican* (vol. ix. No. 21) for the Treasury Solicitor and a *Moralist* for himself. From Hassell he then bought an *Age of Reason*, and a man named Michael O'Connor, who had just walked into the shop, handed the money across to Hassell. O'Connor was a man of suspicious character who had been in the Compter on some charge of dishonesty and had there met Campion; he was never employed by Carlile.¹ Warrants were, nevertheless, issued for the arrest of Haley, Hassell, and O'Connor, and all three men were soon removed from the shop. Only the wife of Thomas Jefferies remained, and she simply kept the shop open. By the last week of the month a number of "volunteers who were free, able, and willing to serve in General Carlile's Corps"² had been recruited from all over the country in answer to the appeal published in the *Republican* at the moment of this last batch of arrests (Friday, May 21st), in the form of a mock proclamation headed with the Royal arms upside down:

Whereas ignorant and bad men in power have ever conspired to prevent others from knowing more than themselves, and . . . have ever persecuted such other men as have desired to see the human race going on in progressive improvement:

¹ "As yet there is suspicion hanging about him, which he must clear up to do himself the least good with me or my friends, or to be received as one of them. We have an important battle to fight, and our speedy success depends much on the characters enlisted to fight it."—*Rep.*, ix. 760. "As soon as O'Connor got to the Compter, he said that he would see Carlile damned before he would suffer two years' imprisonment for him."—*Ibid.*, 805.

² *Rep.*, ix. 737 (June 11, 1824).

Be it known to all that . . . between the 7th and 15th of the month of May inst., three persons were arrested from the shop, 84 Fleet Street, London. This is, therefore, to give notice that all persons who will present themselves to sell books in the said shop, free of cost in getting there, are desired immediately to forward their names that they may be regularly called upon, so as to prevent the stoppage of sale in the said shop. It is most distinctly to be understood that a love of propagating the principles, and a sacrifice of liberty to that end, as far as it may be required, AND NOT GAIN, must be the motive to call forth such volunteers; for—though R. Carlile pledges himself to do what he has hitherto done to give such men the best support in his power—should any great number be imprisoned, he is not so situated as to property or prospects as to be able to promise any particular sum weekly. . . . As the matter seems to be an experiment on the part of Lord Eldon, Robert Peel & Co., to see how far the opposition can be carried, and whether the promises to come forward and stand prosecutions will be realized, all good men are exhorted to make and communicate their resolve, and to hold themselves in readiness.

On Monday, the 24th, William Cochrane arrived post-haste from Manchester, and on Friday, the 28th, he was arrested. On Monday, the 31st, came Thomas Riley Perry from Spalding in Lincolnshire, and he was arrested the same day. No more arrests were made.¹

"Money is one of my weapons, and I fear that we shall want money long before we want men in this *last battle*; but we will fight at the enemy's expense if we cannot conquer otherwise," wrote Carlile in reply to some subscribers at Yarmouth.² He called on all readers to pay their agents at once, and all agents to remit their money to Fleet Street immediately.³ He published lists of volunteers who would help protract the war.⁴ He tried to withdraw from sale each article for which a volunteer was arrested, so as to obtain an advertisement for a new publication each time.⁵

I will sell at two prices [he declared in an open letter to Lord Chancellor Eldon], to all known friends at the regular price, and to all unknown

¹ Narrative based on Carlile's account in *Rep.*, ix. 759 sqq. (June 11th), corrected in the light of evidence given at trials.

² *Rep.*, ix. 742 (written May 31, 1824).

³ *Ibid.*, ix. 672 (May 21st).

⁴ *Ibid.*, 738 (June 11th). Carlile to Holmes (May): "I expect to hear every day that you are arrested in Sheffield; but it is possible this London battle may be decisive. Rather than give in I shall send for you and Mrs. Holmes too, as if I cannot stand in London there will be dire persecution throughout the country. . . . Excuse haste; I am writing defences."—In T. S. Campbell, *op. cit.*, p. 91.

⁵ Carlile to Holmes (May) in T. C. Campbell, *op. cit.*, p. 86.

or suspicious persons, to include your agents, at a price that will cover all the expenses of prosecution. . . . You were a mad brute to reagitae the prosecutions—a blockhead, a ninny. With me you shall have no peace until you leave me to pursue my own course. . . . Your brute persecutions have driven us to coarse terms and violent reprisals; but pronounce the existence of Free Discussion and you will see some of the brightest men that ever the sun shone upon enter the field to conduct it. . . . You destroy the public taste by not leaving the Press free to correct it. . . . You cannot prosecute without agitation. Your strength lies in the ignorance of the people, mine in removing that ignorance, and that ignorance is not to be removed without agitation. By your prosecutions it is heard wherever a newspaper goes that the Bible and Christian religion are disputable things, and wherever that sound is heard the first link in the chain of charm that held them ignorant is broken.¹

Carlile looked forward to the public trials that were coming.

Your strong point [he wrote to Eldon] consists in arresting and holding shopmen to bail, and that is very dirty, paltry work; mine, in their speeches before the Courts, in their bravery, in their triumphant arguments that silence both Judge and Counsel.

He threatened to sicken them by making the defences so long and so numerous that the trials would drag on till another session. If every case were not brought to trial in a reasonable time, he threatened to force the hands of the Government and the Courts by a refusal to give bail in future:

All your secret service money shall be turned into the hands of the lawyers, if you go on to prosecute all that can be found to stand prosecution. You may begin to build new gaols instead of new churches, for you will find something like a national feeling display itself in this case. Prisons do not alarm when the cause of committal is the public good. Christians have been thrown into prisons by thousands, to support a worse cause than ours, to support a bad cause; they succeeded in that bad cause by their very sufferings; and shall not we, think you, succeed in the best cause that any body of men can espouse?²

Nine men—all except the boy—were brought up for trial at the Old Bailey, not before Denman, the Common Serjeant, but before Newman Knowlys ("Little Jeff"), who had now become Recorder.³ But that did not prevent the Court and all approaches

¹ *Rep.*, ix, 705 sqq.

² *Ibid.*, *ubi supra* ("Dorchester Gaol, May 30, 1824, or the finale of tyranny and delusion").

³ *Report of seven trials*, publ. Carlile, 1824; Christopher's is omitted because he pleaded Guilty; O'Connor was tried along with Hassell and acquitted.

to it from being crowded quite early on the June morning fixed for the first exhibition.

William Campion defended himself by reading an address of considerable length. Instead of being branded as blasphemers, it said, "we might be more properly called the Moralists, for we profess no other religion than Morality." It noted the inconsistency of British policy in tolerating idolatry and godlessness overseas, and conceding full civil rights to the Catholics of Quebec while prosecuting rationalists at home. It denounced laws that rested on nothing but such phantasms of the mind as witchcraft and blasphemy instead of being definite and concrete. "If it can be said I have injured any men it is the priests. Let, then, the priests stand forward, and let them say boldly, 'Thou hast wished to deprive us of our tithes, and therefore we wish to imprison thee.'" The defence made some unlucky attempts at historical criticism: the existence of the Jewish nation before the Captivity was a legend, the words Jesus Christ were allegorical, and the scene of his life had been laid in Judea because there was no one left after the desolation of Jerusalem to deny the invention. In spite of the interruptions of an alderman who was on the bench, the Recorder heard him all through. In spite of the extremes to which he had gone, but which were no worse than those to which the Recorder went in his summing-up, the jury retired for about an hour before agreeing to find Campion guilty. As "the consequence of his blind infatuation" for "glorying in his crime" and "having the hardihood to defend such a publication," he was sentenced to three years' imprisonment, and to enter into his own recognizances to keep the peace for the term of his natural life. "My worthy fellow," wrote Carlile, "I judge of your worth as the enemy does. This is a paradox; and so is their mode of defending Christianity."¹

When Clarke was tried he also defended himself, especially by reading extracts from the *Moralist* and by quoting Biblical texts by the dozen, until his voice almost failed him and his defence had to be cut short, as he all but fainted. As the result of a defence that aggravated the crime he was given the same penalty as Campion.²

¹ Trial, June 8, 1824. *Rep.*, ix. 632 sqq., 768 sqq.

² Trial, June 10, 1824. *Ibid.*, x. 23 sqq., 40 sqq. Clarke was not allowed to retire for refreshment, the Recorder saying that his exhaustion was his own fault.—*Ibid.*, p. 60.

Haley was obviously a young man with a classical education, which he displayed with much vanity, almost as much to the disparagement of Carlile and his colleagues as to the criticism of their common opponents. He began by commenting on *The Times*, which said that Campion, the defendant in the first of this series of trials, "was evidently ignorant of the nature of the defence which had been composed for him by some person who had imposed on him by representing it as likely to serve him."

We are not ignorant [Haley boasted]; we are not driven by frantic poverty to engage in the sale of these works. Far otherwise: we know that we cannot expect to continue more than a day or two in the employment, and we have every reasonable prospect of being consigned to the company of the Newgate beetles for some five or six and thirty moons. . . . Whether my defence is calculated to serve or to prejudice me it is my own composition, and I beg that the reporter of 'the leading Journal' will observe that I am not bothered (I quote his own language) by the hard words.

He received the same sentence as Campion, and was warned that no brilliance could save him from the risk of banishment for the next offence.¹ He was destined to change his views before his time was up, and to make a wreck of his life.

The same heavy punishment was meted out to a fourth man. Parry's defence dwelt on Christianity as a gospel of love, and quoted freely the Fathers of the early Church; the Recorder spent an hour and a half in replying to it.²

Hassell's defence of Paine's *Age of Reason* contained nothing unusual. "It is not only me as an individual who am interested in your decision," it concluded; "neither is it confined merely to the question as to the right of debating theological subjects; but through your verdict our enemies are aiming a blow at the principal bulwarks of the *liberty* and *happiness* of mankind—the LIBERTY OF THE PRESS, and FREE DISCUSSION." He was sentenced to only two years in Newgate, and to the usual guarantee to "keep the peace" throughout his life.³

¹ Trial, June 11, 1824. *Rep.*, x. 65 sqq. *Vide infra*, next section.

² Trial postponed till next sessions, July 19, 1824.—*Rep.*, x. 96, 104 sqq.; xi. 695; *Newgate Magazine*, i. 146 sqq.; *Commons Journals* (May 18, 1825), lxxx. 434. Perry's line of defence was probably suggested by Robert Taylor "the Devil's chaplain," a brilliant Cambridge scholar and Anglican priest, who had just come from Dublin, where he had hired a theatre and preached Deistical sermons in full vestments. He lodged in Water Lane, Strand.

³ Tried June 9, 1824.—*Rep.*, ix. 807 sqq.; xiii. 678; xiv. 345 sq., 577 sq.

Jefferies was still more fortunate. A Roman Catholic barrister had been instructed to act for him, and his sole argument, reiterated continuously, was that it was unfair to allow the privilege of blaspheming only to Unitarians, many of whom were now holding high rank at the Bar and in Parliament. "Why were they not prosecuted? Was it because one man was poor and the other rich and high in station that he was to be screened? Was this justice?" And he pertinently and repeatedly asked what there was to prevent a jury of twelve blaspheming Unitarians sitting in the box and trying a defendant who, like Jefferies, had been taught in a Unitarian school. In this case the sentence was one of only eighteen months' imprisonment with securities for life.¹

Cochrane had the same ingenious Mr. French, "not to defend him, but to address the jury," as Carlile put it. He hinted that Cochrane was unable to read, and thus set the jury discussing whether the defendant was aware of the contents of the *Republican* when he sold it. This man was let off with six months' imprisonment.²

Another barrister had been fee'd by some City gentlemen to act for Christopher the Unitarian, and he persuaded his client to withdraw his plea of Not Guilty, with the result that in this case, too, the imprisonment imposed was of only six months' duration.³

It did not escape public notice that the amount of punishment allotted to the various prisoners varied not according to the offence, but according to the manner of conducting the defence.⁴ The Recorder did not merely claim the right of fining defendants who defended themselves, as Mr. Justice Best had done; he actually imposed the punishment, and that not as for contempt of Court, but as for the original offence. "Little Jeff, the Recorder, has done them immortal honour by imprisoning them in the ratio of the ability displayed," said Carlile.⁵ In an open letter

¹ Trial before the same jury as Campion, June 8, 1824.—*Rep.*, ix. 801 sq.

² Trial June 11, 1824.—*Rep.*, ix. 806 sq.; x. 97 sqq. H. Crabb Robinson; *Reminiscences*, written twenty-seven years later, give a confused account of one of these cases, dated November 24, 1823.—(Ed. 1872, i. 400.)

³ Trial, June 8, 1824. Counsel, Charles Phillips. A new jury was claimed as a matter of right, and the prosecution acceded to the application, although "the Recorder did not see the force of the objection: the publication would have to be proved, and the jury were bound to receive the law from him."—*Rep.*, ix. 803 sqq. "I clearly see that the less we have to do with lawyers, as they are at present, the less we shall be disgraced."—*Ibid.*

⁴ *Morning Chronicle*, June 14, 1824.

⁵ *Rep.*, x. 129.

to the Recorder the last four men, Hassell, Jefferies, Cochrane, and Christopher, themselves complained that they had between them only half the share of reward meted out to the other three (Perry had not yet been tried):

We hope and trust, then, Sir, that you will take this into consideration as early as possible, and by making an addition to the favours we have already received remove from us this cause of complaint, and set us on an equality with those who have now so much reason to look down upon us with contempt. P.S.—We hope, Sir, that you will not consider us too presuming on your liberality and fatherly kindness, or taking too great a liberty in extending our plea for some of our still more unfortunate fellow-labourers. You must know, Sir, that, at the same shop from which your kindness drew the present petitioners there are several very deserving young men who are doing the utmost in their power to make themselves worthy of your notice, and who, for their great zeal and very superior abilities, are well deserving, and cannot fail to obtain, when known, a more than common share of your notice and protection.¹

Those already in Newgate were confined day and night in a room twenty-two feet long by sixteen wide, with paper casements to the windows. They slept on door-mats among the beetles, with a raised portion of the floor for a pillow, and they were not allowed to have their own boxes and beds without permission of the prison committee. They had for food a pound of brown bread and a pint of gruel a day, with beef and the water it was boiled in as soup on alternate days. They were not allowed to see their friends except at a distance of four feet and with the intervention of two rows of iron bars; even then friends were only admitted if they said they were relatives.²

"To employ, to improve, and to profit" the imprisoned shopmen Carlile published for the next two years a shilling *Newgate Monthly Magazine, or calendar of men, things, and opinions*, under the editorship of Campion, Hassell, and Perry, with the motto: "Error alone needs artificial support: truth can stand by itself." Here were published the monthly essays of the men who were educating themselves in "Newgate College," and here we can follow Hassell's progress in science and theology, and Perry's

¹ *Rep.*, x. 1 sqq. (July 9, 1824). Carlile similarly: "We have had a little company of men waiting at 84 Fleet Street for new arrests, but have been compelled to disband them. . . . In another series of arrests we will endeavour to treat Little Jeff to half a dozen women, as objects calculated to agitate a greater quantity of his spleen."—*Ibid.*, p. 129 (August 5th).

² *Ibid.*, ix. 844 sqq.; x. 120 sq.; xi. 84.

study of Place *On the Law of Libel* and Mill's *Liberty of the Press*.¹

This last outburst of prosecution was a trial of endurance between the Government and a new religious sect; only the participants had any direct interest, and newspaper reports were accordingly scanty. The opinion of the Radical *Morning Chronicle*, however, was interesting:

We do not doubt [it said] that, if the system now acted on with regard to Carlile be followed up vigorously, it will be so far successful that it will deter people from serving in the shop in Fleet Street, and consequently break up *that* concern.

We can hardly conceive that mere attachment to any set of principles, without any hope of gain or advantage, will induce men (in any number) to expose themselves to an imprisonment of three years. In fact, we do not well see what motive a mere sceptic can have in exposing himself to any great severity of punishment. A very zealous believer in a positive religion may lay down his life in its defence . . . because in return for what he loses here he secures eternal happiness. But the sceptic who looks forward to no compensation in a future life for suffering in this . . . to whom no progress of mankind, in good or evil, a thousand years hence, can be known, and therefore must be a matter of perfect indifference—if he is at all consistent with himself—ought to enter into no contest respecting principles which may expose him to privation or suffering. . . . We therefore look forward to the closing of the shop in Fleet Street as a matter of course.²

"This," replied Carlile, "this is a sample of the drivelling to which the proprietors and editors are forced to preserve their readers . . . THE SHOP IN FLEET STREET WILL NOT BE CLOSED AS A MATTER OF COURSE, nor closed at all."³

The journalistic exponents of popular utilitarianism imagined, as everyone else seems to have done until coming into contact with Carlile and his assistants, that these creatures were selfish, peace-loving infidels. Francis Place knew them better. *St. Paul the Apostle and William Campion: a parallel between the cases of St. Paul the Apostle and William Campion* was the title of an anonymous little sixteen-page pamphlet of his which Carlile

¹ *Rep.*, x. 256; *Newgate Monthly Magazine*, vol. i, September 1824 to August 1825; ii, September 1825 to August 1926. Note especially articles on Cobbett and Religious Persecution, i. 241 sqq.; *Law of Libel*, i. 337 sqq.; *Liberty of Press*, i. 559 sqq.

² Carlile and his fellows were not true sceptics; they had as much positive religion as Spinoza or Holbach.

³ *Rep.*, ix. 856 (July 2, 1824).

published.¹ Campion's experiences in London were compared in detail with those of Paul in Judea (Acts xxi to xxv). The two martyrs were shown to be equal in bravery and in their firm belief in the doctrines they upheld; the things said against Campion now were applicable against Paul then, and what was said then in favour of Paul was applicable to Campion now, for each alike attacked the superstitions of his day. The difference was that the Jewish authorities had definite "laws against nonconformity" (Deuteronomy xx and xxvii), whereas Jesus had given totally different commands (Matthew v and vii), and all that Recorder Knowlys had was an *ex-post facto* law enacted by Hale from his seat on the Bench, in supersession of King, Lords, and Commons. Place called on a dozen benevolent Friends by name; then, "Where is MRS. FRY, *the leader*?" "Are they benevolent? or are they also persecutors for opinions? Will they suffer men to endure all that human nature can endure, without help, because they are neither *criminals* nor *Quakers*?" "Where are the members of the Prison Discipline Improvement Society? Where is the royal president? Where the two marquises, ten earls, three bishops, eleven barons, fifteen members of the House of Commons, who are vice-presidents?" "Is it absolutely necessary that a man should be a convicted villain before he can claim the assistance of the *benevolent band* or the *Prison Discipline people*? Perhaps it is. But if to neglect these prisoners for conscience' sake be a Christian duty, this at least is certain—that the morality and charity are clearly on the side of the persecuted infidels."

5. CARLILE AT LIBERTY, 1825.

The day Richard Carlile was sent to Dorchester Gaol his property was seized. He saw at once what this double punishment meant:

I am not only imprisoned for three years, but am to a certainty imprisoned as long as the present system of government continues, as you have not only obtained the infliction of a heavy fine, but at the same time have taken steps to prevent the payment of that fine.²

¹ In *Place Collection*, lxi. 26 sqq., amid many extracts from the *Rep.* (1824).

² *Rep.* (December 17, 1819). Open letter to Treasury Solicitor asking for free maintenance while in prison.

He passed 1820 in solitary confinement.¹ In February 1821 his wife arrived, and she was confined to the same room; a year later a daughter was there born to them, and they remained together till Jane Carlile's term of imprisonment ended, in February 1823.² His sister, Mary Ann, was sent there in November 1821, and she shared the same room during the daytime; she should have been released a year later, but her fine of £500 could not be paid, as she had at no period of her life possessed property of one-tenth that value, and she could certainly not give security in £1,000 for good behaviour. In gaol she therefore remained for another winter and another summer, until her fine was remitted and she was released nine months after her sister-in-law, in November 1823.³

Richard Carlile was then left in solitude to begin a fifth year of what was practically imprisonment at the pleasure of the Government. His temper was bad and his health seemed to be giving way, till the prison authorities provided a novel and diverting entertainment for him. Something he said was taken as a threat to break out; so he was handcuffed, his saucepans and frying-pans were removed, and a turnkey was put to stand by him while he cooked his dinner, or mended his pen with a pocket-knife, to which attention he replied by giving up his vegetarian diet and living like a lord on fried beefsteaks and boiled suet puddings, and anything else that would keep the turnkey busy.⁴

His business had twice been suspended at 55, Fleet Street, (November–December 1819 and February 1822). On the former occasion some seventy thousand publications, worth about £2,000 at that time, had been removed to an auctioneer's mart.⁵ It was

¹ *Rep.*, ii. 291 sqq.; viii. 417 sqq.

² *Ibid.*, v. 19, 300 sq.

³ *Ibid.*, v. 564 sqq.; vi. 610, 643, 941 sq.; viii. 626.

⁴ *Ibid.*, viii. 687 sqq.; ix. 146 sqq. (December 1823, January 1824). The *New Times* (December 18, 1823) said he was mad and had had to be put in a strait waistcoat under humane restraint. T. J. Wooler ventured to support him: "The law only authorizes his detention as a debtor. . . . On the great question he has conquered. He has defeated the Attorney-General, the Vice Society, and the Bridge-street Gang. The Judges are tired of hearing the prosecutions of his agents. A new shop has been opened in Fleet Street. Every publication which has been prosecuted is sold openly in the shop, without any contrivance or evasion. . . . The battle is won, though he has been taken prisoner. To torture him is not to regain the field."—*Black Dwarf*, January 1824.

⁵ Henceforward it was almost impossible for him to sell a complete set of any work published in parts, because some numbers had been seized at his shop while others were still at the printer's awaiting delivery.

said that one of the aldermen responsible for the seizure had application made to the Court of King's Bench for a writ of *venditori exponas*, but that the motion ended in a joke about their lordships preferring a writ of *igni exponas*. After the second seizure, which occurred early in the very year Carlile hoped to leave prison, he tried to force a sale by obtaining a rule from the Court. But procedure was slow, he quarrelled with his legal advisers, and he brought an action for damages against the alderman who had shared the shrievalty with the sheriff who had seized his goods. The jury returned a verdict in Carlile's favour, but gave him damages of only one shilling for the loss of goods originally worth £2,000.¹ Then a portion of the stock seized was put up for auction; but the sheriff realized only £35 for goods originally worth £500, and the only advantage this gave Carlile was an opportunity for his friends to buy back a statue of Paine.² No subsequent attempts to force a sale met with any success whatever.³ It was impossible to consider the goods seized as part payment of the fines imposed, and, so far from being security for the payment of the fines, their detention helped to make that payment impossible.

I have suffered more by the seizure and detention of my stock-in-trade than I should have suffered if I had been fined £5,000 and had been left to make the best of the property I possessed to meet it with at the expiration of my three years' imprisonment.⁴

As payment of the fines imposed by the judges was out of the question, something had to be done to persuade Ministers to relax the penalty. They were therefore bombarded with "philosophical petitions," not for mercy to Carlile as an individual, but for justice for every section of the community.⁵ Carlile did not approve of petitions in general;

but it is clear that these petitions for Free Discussion are unlike all others, for they promote the very thing for which they ask, even if [it is] not legislatively granted. We may petition for Parliamentary reform for

¹ *Rep.*, vi. 897 sqq. (December 13, 1822); cf. v. 258 sq. (March 1st).

² *Ibid.*, vii. 175, 240 sqq.; *Bull Dog*, pp. 80 sq. (Letter, Carlile to John Jones, January 1823).

³ *Rep.*, viii. 609 sqq.

⁴ *Ibid.*, vi. 903. Petition from Carlile presented by Hume, who said Mr. Carlile was "one of the best moral characters in England" (May 8, 1823). *Hansard*, ix. 114 sqq.; *Rep.*, vii. 610 sqq.

⁵ *Ibid.*, ix. 577 (May 7, 1824).

a century and never get any nearer than at present; but these petitions for Free Discussion form the basis of every kind of reform. We put the thing in progress by asking for it, whilst we practise Free Discussion in spite of persecution. It is not a petition to be allowed to practise Free Discussion, but a petition to be allowed to do so unmolestedly—a petition against persecution.¹

One such petition was presented by Joseph Hume, and in reply the Home Secretary said that "nothing could have been more violent and improper than the conduct of Carlile" in prison, as "Carlile had given him notice that after a certain day, which he named, he should consider himself illegally detained and should feel himself justified in murdering any governor that might be appointed to guard him." The Attorney-General rebutted "an unfounded allegation" against the Government, since "the property which had been taken on the premises of the petitioner was not at present, nor had it ever been, in the hands of the Government. It was in the possession of the sheriffs, and, if they were retaining it improperly, the petitioner had his remedy against them."²

Another, signed by Carlile and the men in Newgate, prayed the House "to enact a law that should extend to them the Freedom of Discussion, allow them to publish such opinions as those to which their inquiries might have led or might hereafter lead, and release them from all further pains and penalties for past publications of the kind."

Brugham presented this, treating it as a petition for the toleration enjoyed by all other dissenters from the Established Church. Expediency, he said, required that the law should not press so heavily on enthusiasts and fanatics as to bring them to be looked on as martyrs. Then he spoke of the glaring inconsistency of prosecuting the poor for selling Palmer while the rich had the privilege of having Gibbon in their libraries, and while Voltaire's works had never been prosecuted for corrupting the morals of

¹ *Rep.*, xi. 749. Carlile adds: "No corrupt power can stand against Free Discussion fairly maintained. It is the only principle that can accomplish universal conquest—and that conquest it will accomplish, and with it the happiness and highest state of mankind. It is the only panacea for human ills, and since philosophy has made such a progress as to pursue scientific acquisitions on the certain basis of excluding error as it proceeds, he is the enemy of the human race who opposes or interrupts Free Discussion."

² *Herald*, xii. 1285 sqq. (March 29, 1825). *Rep.*, xi. 407 sq., 534 sq.

the ladies and gentlemen of the West End. Even then Brougham was careful to make it clear that he considered indecent ribaldry against the institutions of the country to be a crime. It was remarkable that the Home Secretary hardly disagreed with Brougham. He said that the works prosecuted were selected, not because of their opposition to established institutions, but because of their ribaldry.¹

Carlile might also bring pressure to bear on the authorities by threatening them with a deluge of publications more disgusting than any he had hitherto produced. No man hated vulgarity more than he did; but he had now come under the influence of the "dismal science" and Malthusianism of Place, and he was quite prepared to raise the same kind of resistance to the continued prosecutions for obscene books and prints as he had raised against the prosecution of anti-Christian and anti-ministerial publications.² He also sold "the god of the Jews and Christians" for a shilling, the idol being designed according to incongruous Scriptural descriptions of Jehovah, which, when all jumbled together, produced as horrible a devil as any heathen god in a missionary magazine. Yet, if this plate were prosecuted, might not a worse one take its place? So all that happened was that a Jew broke the window with his umbrella, and removed the caricature and had to pay damages.³

In 1824 a fire occurred at Carlile's premises in Fleet Street, and

¹ June 1825: *Rep.*, xi. 737 sqq.; *Newgate Monthly Magazine*, i. 559. Hansard, xiii. 1015 sqq. There was another petition from "the moral blasphemers of Christianity" on June 30, 1825 (*Rep.*, xii. 52 sqq.); one from Edinburgh Freethinkers' Zetetic Society the previous year (*Morning Chronicle*, May 18, 1824); one from Sheffield, signed by 181 mechanics, 117 tradesmen, 3 doctors, 6 gentlemen, presented by Lord Milton, May 12, 1824 (*Rep.*, x. 12); one, from Beverley, Yorks, by Hume, May 13, 1824 (*Rep.*, ix. 655); one from Stokesley, by Hume, June 3, 1824 (*Hansard*, xi. 1078). It was said that only an accident prevented the old Bishop of Norwich from presenting a petition signed by 2,000 communicants and 100 ministers (*Westminster Review*, ii. 27). The first seems to have been presented July 8, 1823 (*Rep.*, ix. 226; viii. 228); it naively ventured "to assure the House from a practical acquaintance with the commercial and trading world that an avowal of particular religious opinions is never required in the most confidential transactions of business; nor is a contract deemed the less binding though it has no reference to the popular creed."

² He was prepared to advocate Free Love as well as Free Discussion; but by this he meant little more than an easier divorce-law. He was opposed, to all mystery, and saw no evil in any kind of knowledge. But he purposely said more than he meant in order to provoke his opponents.—*Rep.*, xi. and succeeding volumes, *passim*.

³ *Rep.*, xi. 579; xii. 127, 223, 603, etc.

the churchmen of St. Bride's seized the opportunity to improve the view of their church by demolishing No. 84 and leaving the present St. Bride's Avenue in its place. Carlile made his release the chief condition on which he would part with his house. In May 1825 he said that a committee of churchmen had interviewed Peel. By July his shopmen had moved to No. 135.¹

In November of that year the sheriff of Dorset received two Royal warrants respecting Richard Carlile. One said: "We do hereby remit so much of the said fines as may still remain unpaid." The other: "We, in consideration of some favourable circumstances presented unto us in his behalf, are graciously pleased to extend our grace and mercy unto him, and to remit unto him such part of his said sentences as directs his finding security for his good behaviour." After six years' imprisonment for libel Carlile was at last as free as the wind that blew upon him as he rode away on top of the coach across the Dorset Downs to his native Devon.²

But it was not yet certain what his liberation meant.

This remission of that part of my sentence which required me to find recognizances for good behaviour during life must mean one of two things: either that, on my part, Free Discussion is fully established; or that, on the part of the King's Government, it means to renew prosecutions and to pursue my expatriation. I am, of course, ignorant of State secrets; but my own course is determined—*onward*.

When I heard that my recognizances were abrogated, I acknowledge that I felt and pronounced it a finish to my triumph; but in every other respect my quitting of the Gaol was to me mentally but as a change of lodgings. Yet I am fully alive to what I have done and intend to do. If Free Discussion be accomplished in this country it will be a point gained towards human improvement, of which the history of man in no country maketh mention. In some countries all public discussion is suppressed; in this the maxim has for two centuries been to punish the foremost. I saw this eight years ago, and resolved to war with it. I saw also that by my going to extremes with discussion I should remove all fears, as I removed all danger, of prosecution, from those who had been foremost or who might be disposed to follow me at a safe distance. On this ground every free-minded literary man ought to have given me his support; for my long confinement was, in fact, a sort of penal representation for the whole. I confess that I have touched extremes which many thought

¹ *Rep.*, x. 634, 671; xi. 352, 698. It is probable that the churchmen in question were very liberal-minded men, and were pleased to help Carlile. Mr. Alderman Waithman lived in that parish, and a monument to him in that church styles him "a friend of liberty in evil times."

² *Ibid.*, xii. 643 sq.

imprudent, and which I could only see to be useful with a view of habiting the Government and people to all extremes of discussion, so as to remove all ideas of impropriety from the media which were most useful. If I find that I have done this, I shall become a most happy man; if not, I have the same disposition unimpaired with which I began my present career—a disposition to suffer fines, imprisonment, or banishment, rather than that any man shall hold the power and exercise the audacity to say, and to act upon it, THAT ANY KIND OF DISCUSSION IS IMPROPER AND PUBLICLY INJURIOUS.¹

To test the extent of the new freedom Carlile kept his shilling god on sale till one session had passed at Old Bailey and one term at King's Bench; but no bill of indictment was presented. Mrs. Wright was the centre of a small riot at Nottingham, and Holmes ran some risk of prosecution at Sheffield. At London, when a serjeant-at-law complained that public decency was insulted, and the public peace endangered,

the Lord Mayor said he was well convinced that all the owner of that shop sought was the public attention which he hoped to obtain by being censured by the chief magistrate. In this hope that person should be disappointed, as unless a breach of the peace or an obstruction should take place near the shop the exhibition should pass without notice from him.²

The auctioneer sent back the remnant of the stock seized while his father was sheriff in 1819.³

By August 1826 only three men remained in prison, and they were removed from Newgate. One man had secured his release by recanting, and he now announced a vain, short-lived, and scurrilous weekly: "Bow! Wow!! Wow!! On Saturday, August 26th, will be published No. 1 of the *Bull Dog*, a weekly expositor of political humbug. Among other interesting matters will be found strictures on the conduct and opinions of the notorious Carlile, Cobbett, and Place."⁴ Another man, Hassell, the Dorset farmer's son, died of fever soon after his liberation and was buried in St. Clement Dane's churchyard, "thus made to form part of that evil which he had lately so well exposed—the improper burial

¹ *Rep.*, xii. 644.

² *Ibid.*, xiii. 27, 40, 59, 90; xiv. 141, 255, 304. *Morning Herald* (January 23, 1826).

³ *Rep.*, xiii. 255.

⁴ Place's copy of the *Bull Dog*, with notes and correspondence, is among the periodicals in the British Museum.

of dead bodies in the centre of a City."¹ The *Newgate Magazine* took leave of its readers:

Let any one of you bring to your recollection the moment in which you arrived and succeeded in the object of your previous care and solicitude—let any one of you imagine the feelings of the patriot soldier when arrived, not only at the end of his campaign, but crowned with honours and with victory—then may you judge of our feelings at the close of this work, the object of our care, and the triumph of FREE DISCUSSION.

The *Republican* also had run its course, and become, like all instruments of war, a liability rather than an asset. It was to posterity that Carlile dedicated his fourteenth and last volume.

The first publication in which Free Discussion has existed is not a publication for the present generation but for posterity [he said]. The sound reformer has no other encouragement than to bequeath his merited caresses to his senseless memory, or to enjoy them in anticipation. His patrons live not with him, but are to be his posterity; and from those persons with whom he lives he finds more of insult than of gratitude.

Before posterity could enjoy the Freedom of the Press for which Richard Carlile and his assistants had struggled the opinion of the public and of the politicians had still to be changed. For the present, however, a truce at least had been called. Therefore, before considering the last round in the struggle, it will be well to consider the change that was occurring in the minds of people, as it was on this change that the final outcome of the struggle depended.

¹ *Rep.*, xiv. 345 sq., 577 sq., 594.

"Then, shade of dear Hassell, thy mates left behind thee,
Thy words will observe, thy example retain,
Thy objects pursuing, for well do we mind thee—
'Twas freedom for man thou didst strive to obtain.
The fool'ries of priestcraft already are dying,
The mists of delusion are rapidly flying,
And we thy companions most fervently trying
Our tyrants to crush, and our rights to maintain."

(Lines by W. V. HOLMES
after witnessing Hassell's funeral.)

CHAPTER EIGHT

THE MARCH OF MIND

1. THE LIBERALISM OF THE 'TWENTIES.
2. POETRY AS CANNON-SHOT.
3. OVERSEAS INFLUENCES.

I. THE LIBERALISM OF THE 'TWENTIES.

Whoever has attentively meditated on the *progress of the human race* cannot fail to discern that there is now a spirit of inquiry amongst men which nothing can stop or even materially control. . . . Reproach and obloquy, threats and persecution, will be vain. They embitter opposition and engender violence; but they cannot abate the keenness of research. There is a *silent march of thought* which no power can arrest, and which it is not difficult to see will be marked by important events. Mankind were never before in the situation in which they now stand. *The Press* has been operating upon them for several centuries, with an influence scarcely perceptible at its commencement, but daily becoming more palpable and acquiring accelerated force. It is rousing the intellect of nations, and happy will it be for them if there be no rash interference with the *natural progress of knowledge*, and if, by a judicious and gradual adaptation of their institutions to the inevitable changes of opinion, they are saved from those convulsions which the pride, prejudices, and obstinacy of a few may occasion to the whole.

So wrote Samuel Bailey, of Sheffield (1791-1870), at the end of his *Essay on the Publication of Opinions* (1821)—a little work which went through three editions in ten years, and which well-informed Radicals honoured as the most useful single addition to the moral sciences since the *Wealth of Nations* (1776).¹ The French eighteenth-century idea of intellectual progress was spreading in Britain as a new and constructive social gospel whose prophets could not but smile at the crude, destructive common sense of Paine and the fanatical iconoclasm of Carlyle and his assistants, although they

¹ *Essays on the Formation and Publication of Opinions* (eds. 1821, 1826, 1831). *Westminster Review* on its sequel, *Essays on the Pursuit of Truth and Progress of Knowledge* (July 1829). The 1826 edition of the first set of Essays had been noticed by James Mill in *Westminster Review* (July 1826)—A. Bain, *op. cit.*, 304. Place quoted from it in Brit. Mus. Add. MSS., 36626, f. 183.

recognized well enough that Carlile's battle was their battle also. By unlimited discussion they hoped to build up a scientific knowledge of what would be most conducive to human happiness, while Carlile concerned himself with the demolition of existing errors.¹

One of the most influential of "Scientific Radicals" was James Mill, of the India Office (1773-1836). In 1821 he volunteered to write an article on the *Liberty of the Press* for the famous fifth edition of the *Encyclopædia Britannica*; and although he was compelled to reduce its size from three sheets to two, this closely reasoned argument was admirably suited not only for publication as part of the *Encyclopædia*, but also for reprinting as a pamphlet for free distribution. With relentless logic Mill here drove home the advantage, even of allowing the Press to make the people so discontented with bad government that the ruling few would find it imprudent to disregard the discontent of the many. In harmony with the prevailing intellectualism of the age he assumed that truth was something plain and straightforward, and that every man who was not misguided would therefore naturally embrace it, especially if it were carefully adapted to his capacity. The ordinarily unimaginative Mill was filled with an inspiring hope that "something better than the dreams of the Golden Age would be realized upon earth" if only the light of truth could be turned upon all actions which failed to ensure the highest measure of human happiness.²

Mill's intimacy with many of the chief journalists of his day facilitated the spread of liberal ideas through many channels, and especially through the Radical *Morning Chronicle*.³

¹ Bentham's advice in Holyoake's *Carlile*, p. 20, quoting *Christian Warrior*, p. 13. Similarly, J. S. Mill in *Autobiography* (ed. Laski, 1924), pp. 311 sqq.

² It has not been possible to ascertain the exact dates of the reprints; but there was probably first a separate reprint about 1822; second a separate reprint bound later with the other similar reprints about 1825; and a third in 1828. An anonymous and undated 4to reprint (pp. 16) was inserted by Place in his Collection of Newspaper Cuttings as the preface to XXXIX. ii. The British Museum Reading Room has an undated 8vo reprint (pp. 34); this and separate reprints of Mill's six other articles are bound together with an undated title-page which is marked "Not for Sale," but which bears James Mill's name; this is catalogued as "1825?" Alexander Bain suspected a reprint in 1825, and was acquainted with another in 1828.—*James Mill, a Biography*, pp. 292 sq., 329; also 193, 196.

³ H. R. Fox Bourne, *English Newspapers*, ii. 234 sqq. John Stuart Mill, *Autobiography*, ch. iv. Walter Coulson (ed. Traveller) wrote articles on Periodicals in *Westminster Review*, iii. 194.—Place in Add. MSS. 36626, f. 109.

"Misgovernment must destroy the Press, or the Press will destroy misgovernment," might almost be said to have been its motto.¹ In this spirit it dared to impugn the perfection of the English Bench as well as that of the English law.² It fought for police reports, as the publicity of the proceedings of police courts was the only check of any value against the wanton exercise of the power of commitment entrusted by the law to magistrates.³ It fought, too, for the right to mobilize general opinion against undesirable lines of conduct, and against the Judges' view that this was mere scandalmongering, and that those who had any information might obtain their end equally well and more directly by making their communications to the appropriate quarter in each case.⁴

John Stuart Mill (1806-73) was himself another channel by which his father's views were broadcast. One of his first appearances in print, when he was only sixteen, was in an anonymous letter to the *Morning Chronicle* on religious persecution, attempting to expose the "unmeaning absurdity that Christianity is part and parcel of the law of England"—"put together by a Judge, passed

¹ *Morning Chronicle*, September 3, 1822.

² It regretted that at King's Bench so much time "should be occupied in trials for what are called offences against religion," and it suggested that Judge Bayley was sentencing persons for reviling—"an indecorum"—and not for denial of Christianity (February 8, 1823).

It backed Hume up when he presented Carline's petition against the detention of his stock: "The equal administration of law is due to the Infidel as well as to the Christian" (May 9, 1823).

It often quoted the opinions of little-read divines, and it may well be that these very effective quotations were often furnished by James Mill.

³ *Morning Chronicle* (October 27, 1824), on Duncan v. Thwaites (October 26, 1824); Justice Bayley summed up against the publishing of *ex-parte* depositions. Also Duncan v. Trend (December 15, 1824).

⁴ *Morning Chronicle* (December 4, 6, 7, 1826), on C. J. Abbott's summing up in *Bochsa v. John Hunt*: the *Examiner* had insinuated that this foreign musician—who had later been dismissed—had been introduced into the Royal Academy of Music in the character of the Devil.

Morning Chronicle (July 14, 16, 19, 1827): a jury gave a farthing damages to a woman libelled by *Morning Chronicle*; Best (then C.J. of Common Pleas) said: "I wish to put my sentiments on record at a time when a struggle is going on between the Press and the justice of the country." *Morning Chronicle* replied: "The justice of the country, when translated out of the eloquent language of Sir William Draper Best into homely English, means pettifogging; and the struggle is really between pettifogging attorneys and the Press of the country."

See also Fonblanque's essay on the new surgical practice of injuring the liberty while attempting to cut out the licentiousness, in *England under Seven Administrations*, i. 90 sqq.

from judge to judge, with solemn and appalling gravity."¹ He wrote also a series of long letters on Freedom of Discussion on religious subjects, signed them "Wickliff," referred his readers to "Mr. Mill's invaluable Essay," and expressed himself so warmly that half the letters were never printed.² In 1823, when the *Westminster Review* was established as a Radical rival of the Whig *Edinburgh* and the Tory *Quarterly*, the Mills, both father and son, contributed some articles to it, and John Mill said later that he had discussed the Law of Libel among other things in his reviews.³

One of the most important members of the Mill circle was Francis Place (1771-1854). His articles in the *Statesman*, and his pamphlets *On the Law of Libel* and on the parallel between *St. Paul the Apostle and William Campion*, have already been considered.⁴ We have seen him behind the scenes lending books to John Hunt and William Hone. We find him drawing up a petition from the Westminster electors alleging that the restrictions on the Press were among the chief causes of public distress.⁵ He was perhaps instrumental in obtaining the reissue of James Mill's *Encyclopædia* essay.⁶ And there is accumulating evidence of his correspondence with Carlyle in the Dorchester days, helping him with both money and ideas, enlisting the support of others on his behalf, and only taking care not to lessen the value of his assistance by bringing himself into obloquy.⁷ In Parliament

¹ Note by F. P. in *Place Collection*, XXXIX. ii. (October 1822). With a logic equal to his father's, young John argued that the law of England was a collection of precepts; that Christianity was partly a collection of moral precepts and partly a collection of dogmatic opinions; that those moral principles were certainly not part of the law; that dogmatic opinions could not possibly be included in a collection of precepts; and that Christianity could therefore be no part of the law, though the protection of Christian doctrines by punishment was.

² *Ibid.*, p. 111; J. S. Mill, *Autobiography*, ch. iv.

³ *Autobiography*, ch. iv. One notes "M. Cotta and Special Juries" in i. 147 sqq. (January 1824); "Religious Prosecutions," ii. 1 sqq. (July 1824); "Penal Code for Louisiana," iii. 70 (January 1825); "Law of Libel and Liberty of the Press," iii. 285 sqq. (April 1825).

⁴ *On the Law of Libel* was reviewed by John Mill (see Place's copy in Add. MSS.), cited in *Westminster Review*, i. 153, and reviewed there (iii. 285) as "the acknowledged production of a known and tried friend of the people."

⁵ *Place Collection*, XXXIX. ii. 182 (February 13, 1822). He referred specially to punishment before trial and the threat of banishment after.

⁶ Wallas, *Place*, p. 187.

⁷ *Bull Dog*, pp. 4, 49, 52, 73, 80 sq., 85 sqq., 102, 110.

"I have reason to believe that he received substantial aid in his long imprisonments from the Bentham circle."—A. Bain, *op. cit.*, p. 435.

"In Carlyle's last days he spoke of Francis Place as 'his old tutor who had a

also it was no longer a Burdett or a Hobhouse that best represented the most thoughtful Radicals; instead it was Place's mouthpiece Joseph Hume, or else Ricardo or Brougham.

Jeremy Bentham (1748-1832) was not too old to share his friends' interest in the Struggle, nor was his respect for law so great as to prevent him from helping the law-breakers. More than once he contributed to Carlile's relief, and gave permission for his name to be published; not for the purpose of giving support to his doctrines, but because, quite irrespective of the truth or falsity of Carlile's opinions, he regarded the cause for which Carlile was suffering as "the cause of whatever is good in religion and government—the cause of Free Inquiry, on which all truth, and consequently all useful truth, depends."¹

He discussed the Press problem in a few small pamphlets dealing with questions of the moment, and one of them, a letter to the Spanish people, *On the Liberty of the Press and Public Discussion*, had Hone for its publisher.² The idea was gradually dawning on Bentham that every one was *ipso facto* a member of

hard task to beat all the superstition out of him."—Holyoake, *op. cit.*, p. 20 sq., citing *Christian Warrior*, p. 26. The draft of a long letter, Place to Carlile, August 17, 1822, has been printed in Marie Stopes, *Contraception* (1923), pp. 271 sqq.

Above all, see the almost incredible evidence of Carlile's daughter, Theophila Carlile Campbell: "Place kept up a correspondence with Carlile, and may be said to have been his tutor during the long years of his imprisonment. He loaned or otherwise procured many valuable works, and argued and discussed with him all their points of difference, his interest in his pupil never flagging for the best part of their lives. There is no doubt that Place saved Carlile's life more than once by warning him in time, and rendered him invaluable service in more directions than one." "He kept Carlile informed of all the plots that were hatching for his destruction." The following extracts from an early letter to Carlile in Dorchester Gaol from "Regulator," whom Mrs. Campbell identifies with Place: "Excuse me suggesting to you how necessary it is to keep by you an emetic [A recipe follows, and directions for use]. . . . Although you and I discard anything but natural agency, yet some supernatural power for all that might drop something into your food. What was the death of Napoleon? What became of Peter Annett, can you tell me? What was the disease of Queen Caroline? Act with suspicion and you will act with caution. The Christians become daily more exasperated against you, as you foil one after another. . . . The Christian ruffians, by resorting to force, have acknowledged their defeat." —*The Battle of the Press as told in the Life of Richard Carlile* (London, 1899), pp. 243 sqq.

¹ Bentham to Carlile (April 10, 1820), in Bentham MSS. 10, at University College, London; incorrectly labelled. Similarly Bentham, *Works*, x. 527 (October 1821).

² In *Works*, ii. 279 sqq. (MS. October 1820). Also *The King against Edmonds, Wooler, and Others* (1820), in *Works*, v. 239 sqq.; and *Letters to Count Toreno* (1822) on a proposed Spanish penal code, in *Works*, viii. 187 sqq. (MSS. September–October 1821).

what he whimsically called the "Public-opinion Tribunal," of which the Press was a very important organ, the perfect freedom of which would be the chief guarantee of the progressive happiness of the sovereign people, and their chief security against the sinister interests of their rulers; this idea he published in 1830 in the first instalment of his model *Constitutional Code*.¹ Important as were these, the latest thoughts of the barrister-hermit of Queen Anne's Gate, his earlier works on the subject were still more influential; and it was now that he and his friends first gave them to the world, for not a single one of his writings on the Freedom of the Press was published until the eighteen-twenties, when he was over seventy years old.

Back in 1792 he had attacked the Libel-law, as being judge-made and dangerously undefinable, in *Truth v. Ashhurst*, on law as it is contrasted with what it is said to be. "O my dear countrymen," Truth said, "I fear this paper is a sad libel—there is so much truth in it." So it was not published until Richard Carlile brought it out thirty-one years later.² Similarly, in 1809 he had written the *Elements of the Art of Packing as applied to Special Juries in Cases of Libel-law*, and had had it printed. But it ascribed the present state of the Libel-law to the unchecked sinister interests of the Judges, which made the Lord Chief Justice "act in the character of protector-general of all established abuses . . . the Liberty of the Press being their common and irreconcilable enemy." From this it would follow that anyone "attempting to bring to light any *abuse*, the theatre of which is to be found in any part of the system of *judicial procedure*, will of course be tormenting himself. . . . The purity of the Bench is an article—a fortieth article—in the creed of Englishmen: orthodoxy, on this ground, even where unpaid, universal. Yes: behold the *cause* of it." So Romilly easily persuaded Bentham that Lord Chief Justice Ellenborough would certainly procure the prosecution of this libel, with the result that it, too, was withheld from publication until 1821.³

¹ The so-called *Constitutional Code*, Book II, in *Works*, ix. 146 sqq. Similarly, *Securities against Misrule*, first printed in *Works*, viii. 555 (MS. 1822-3); and *Principles of Judicial Procedure*, in *Works*, ii. 121, where Bentham is said to have held that revolution was preferable to the evils that attended any interference with the Freedom of the Press (MS. 1820-27, edited by R. Doane, 1837).

² *Works*, v. 234.

³ *Ibid.*, 61 sqq.; A. Bain, *James Mill*, p. 102.

In a third work, the famous *Book of Fallacies* which John Hunt published in 1824, the "sham popular distinction" of Liberty and Licence was attacked, and the well-known definition given:

The *licentiousness* of the Press is every disclosure by which any abuse, from the practice of which they [in whose hands the supreme power of the state is vested] draw any advantage, is brought to light and exposed to shame—whatsoever disclosure it is, or is supposed to be, their interest to prevent. The *liberty* of the Press is such disclosure, and such only, from which no inconvenience is apprehended.¹

British "Philosophical Radicals" were naturally as incapable of seeing any real difference between Liberty and Licence as French *philosophes* would have been. But what was the attitude of those who wrote as Christians? How far had the free spirit of the older Nonconformity survived the Methodist revival? The Unitarians of the second generation were for the most part timorous folk; but among them the "Rational Dissent" of the eighteenth century found expression in the sermons of one of the greatest preachers of the age, W. J. Fox (1786–1864), who boldly declared, on the Sunday before Carile's conviction in 1819, that the punishment of those who attacked an established religion was quite unnecessary for the maintenance of stable government.² Among orthodox "Evangelical Dissent," on the other hand, such opinions were rarely uttered; the surprise was therefore very great in 1821 when Robert Hall (1764–1831), the most learned and most popular of Baptist preachers, republished his *Apology for the Freedom of the Press and for General Liberty* (1793), so as to show that he at least was no political apostate; and had he not himself reissued the *Apology* someone else would probably have done so—not so much, perhaps, because of its plea for Freedom of Inquiry as the only way of being sure of knowing the truth, nor even for its argument that Free Inquiry was a natural right anterior to all government, as for its denunciation of a political prosecuting-society as an organization for the perpetuation of abuses and the prevention of reform. The result was a heated controversy: a religious paper declared that it was at a loss to imagine in what part of the sacred

¹ *Works*, ii. 452. Reviewed by Sydney Smith in an *Edinburgh* article that has often been reprinted among his essays. Bingham, Place, James Mill, and John Hunt are all said to have helped make the book readable.

² W. J. Fox, *Duties of Christians towards Deists* (1819); R. Garnett, *Life of W. J. Fox*, p. 40 sq.

volume Hall had discovered the least sanction for any one of his notions; Hall replied in letters to the Leicester newspapers, and five editions of the review and his strictures on it were published in pamphlet form by at least four different publishers. Thus the political faith of eighteenth-century Nonconformity became vocal again.¹

During the eighteen-twenties liberal principles were not only preached by publicists: they came also to be acted upon by statesmen.

At the beginning of 1822 Robert Peel (1788-1850) succeeded Lord Sidmouth as Home Secretary, after being Secretary for Ireland and manipulator of the Irish Press for the previous ten years,² and at first he did not depart far from the policy of his predecessor, as the following instance will show:

In 1822 an Essex Unitarian named Daniel Whittle Harvey started the Radical *Sunday Times*.³ In its seventeenth number (February 9, 1823) it communicated the information that George IV was suffering from a disorder of an alarming and hereditary description, from which nothing but the prayers of his subjects could save him. Two days later the King wrote to Peel from Brighton:

The King desires, if the law can possibly reach this infamous attack, that the Attorney-General should lose no time in attending to it.

The King is obliged to observe that some steps should be taken with respect to Sunday papers. Why not treble the duty upon all Sunday newspapers? The King reads everything of this kind, and feels it a duty to do so; hence the King can judge of the mischief resulting from this abuse of the Liberty of the Press.

These observations are equally applicable to obscene prints in the form of caricatures. There is scarcely a shop in London that deals in such trash in which the King is not exposed in some indecent ridiculous manner. This is now become a constant practice, and it is high time that it should be put a stop to. The King relies with great confidence on

¹ Hall had been at college with Sir James Mackintosh, and was now pastor of William Carey's church at Leicester. Olinthus Gregory, *Brief Memoir of Robert Hall*, pp. 55 sqq.; *Eclectic Review* (April 1832), 3 ser., vii. 399 sqq.

² The Irish "proclamation fund" of £10,000 a year was spent on advertisements in friendly newspapers, some of which could not otherwise have paid their way.—C. S. Parker, *Sir Robert Peel*, i. 114 sqq.

³ Harvey of Feering (1786-1863), four times M.P. for Colchester (1826-34); appointed first Commissioner of City Police 1839.

Mr. Peel's zeal and ability, and, above all, on that most confident distinguishing quality, honest firmness.¹

That same night Peel sought an interview with the Attorney-General, and next morning the Attorney-General conferred with the Solicitor-General, and then the two Law-officers advised the Cabinet against a prosecution, "with prudent regard to the possible inclinations of a London jury on some of the topics referred to."² Peel, however, rejected that advice and had an ex-officio information filed against the proprietor and also against the producer of the *Sunday Times* for circulating a scandalous and malicious libel tending to bring the King into contempt among his subjects, and to make them believe that he was afflicted with mental derangement. This was the first prosecution of a regular newspaper for state libel for a dozen years.

At the trial (October 30, 1823) Denman, acting on behalf of the printer and publisher, expressed his astonishment

at seeing that His Majesty's Attorney-General, in the sound exercise of that discretion according to which he is to carry into effect the great prerogative which he enjoys of filing ex-officio informations, has been persuaded to believe that, upon looking to all the circumstances of the case and of the contents and character of this publication . . . it was fit to be selected as an object of prosecution in order to vindicate the honour of the Crown and to allay the discontent of the people.

Eight months previously the King's health was generally discussed, and the worst was commonly reported and widely believed. The incapacity of a King was so important that it was a fit object for public interest and newspaper discussion. The writer of the article did not know that the report was false. On the other side the Attorney-General argued that the article must have been ironical because it ascribed the King's derangement to "the loss of a daughter and a consort *equally* dear to him." The Chief Justice said that it was a criminal act to assert falsely of any person that that person was labouring under the affliction of mental derangement; and that the offence might be of a more aggravated nature in the case of the King than in that of a subject. After two hours' discussion the jury asked to be assured that a malicious intention was not necessary to constitute a libel. Finally

¹ G. R. to Peel (February 11, 1823), quoted by Parker, *op. cit.*, i. 337 sq.

² *Ibid.*, but Parker does not complete the story.

Harvey, the proprietor of the *Sunday Times*, was sentenced to three months' imprisonment in the Marshalsea, and his publisher and printer to a fine of £200 and securities in £2,000, besides one month's imprisonment.¹

Peel seems to have been at first the victim of advice, being biased by his Irish apprenticeship in favour of the views of George IV and Lord Chancellor Eldon.²

Another solitary, though less explicable, exception to his general inaction during his first two years at the Home Office was the prosecution of James Watson, almost as though he was intervening in the contest between Carlile's assistants and the Constitutional and Vice Societies. It is perhaps best explained as a successful attempt to persuade Wilberforce to leave the suppression of public libels to the public authorities. Moreover, he already saw that no good was done by advertising the opinions that were prosecuted.³ But as yet the value of an absolutely impartial and regular application of the Law of Criminal Libel seems hardly to have dawned on him.

In 1824 he came nearer to making a methodical attempt to extirpate the rationalist book-trade; but he wavered, perhaps himself fearing to go farther, perhaps persuaded by his Law-officers to cry off, perhaps because it was work in which he was not himself interested and of which he had done enough to satisfy his constituents or Lord Eldon or someone else in the Cabinet or at the Home office that he himself was orthodox enough, but that the enterprise was too difficult to be carried through by merely frightening the salesmen.⁴ He was learning that the struggle was not merely "an attempt on the part of the family of the Carliles to triumph over the laws and religion established for the general benefit."⁵ He was not the man to engage in a religious war. He

¹ *State Trials* (N.S.), ii. 1 sqq.

² "It is a question with me, and ever has been so, whether Mr. Peel has any influence in this matter. . . . I shall see Old Eldon dead before I quarrel with Mr. Peel or write his character."—Carlile in *Rep.*, xi. 763. This may have been insight or it may have been policy.

³ *Hansard*, ix. 116 (May 8, 1823, on Carlile's petition).

⁴ So late as December 7, 1824, the Under-Secretary wrote to the Treasury Solicitor that, if the Law-officers should think that the enclosed numbers of the *Republican* were "replete with the most infamous blasphemy," "Mr. Peel desires that a prosecution may be instituted against Carlile, unless the Attorney- and Solicitor-General shall see some material objection thereto."—H.O., 49. 7, p. 260 sq.

⁵ Peel, March 26, 1823, in *Hansard*, viii. 725.

was a business-like politician whose aim and achievement were efficient administration, especially in regard to finance and the suppression of crime. He could usually be convinced by argument or experience that his policy was inexpedient. Orange Peel could be squeezed, as the Radicals put it. He was always impressionable and adaptable, and no Conservative statesman was better fitted to effect or make effective the many great internal changes that were needed during the 'Thirty Years' Peace.

One important lesson he learnt was that nothing was gained by staging great public prosecutions to attract the attention of the people and bring obloquy upon the Judge.¹

Another lesson both he and the Judges learnt was that the Home Secretary was easily put into the difficult position of having men and women in prison at his pleasure because they could not afford to pay the fines or give the security demanded of them. Ruinous fines and excessive bail were never again demanded after Peel had virtually to commute the monetary penalties imposed on Richard and Mary Ann Carlile to continued imprisonment at the rate of one extra year in prison for every £500 of fine unpaid.

Peel also made two great statutory changes in 1825, the year Carlile came out of prison. The one affected English libel-trials; and was probably suggested by the agitation of Bentham and Wooler against the packing of Special Juries, which was henceforward to be chosen by lot.² The other lessened the punishment for public libel in Scotland: the Seditious and Blasphemous Libels Act of 1819 had been harsh for England; but it was milder than the Scots law, and it was therefore extended to Scotland in 1825;

¹ H. Hobhouse (Under-Secretary) to the Vicar and a Major Hawkes, who reported that the respectable inhabitants of Dudley were desirous of suppressing a man named Samuel Cook's practice of exhibiting placards of a "mischievous and inflammatory" nature in his shop window (May 24, 1826): "Mr. Peel thinks that to make the papers in question the subject of a public prosecution by the Crown would be to give them and their author too great importance and would probably do more harm than good. If you think they are doing a serious local injury, he requests that you will hold Cook to bail at the Sessions, and cause an indictment to be there preferred against him as a private prosecution, against the expenses of which Mr. Peel will take care that you shall be indemnified."—H.O., 41. 7, pp. 229 sq. Cook was convicted at the Assizes, but was not sentenced.—*Accounts and Papers*, 1834 (410).

² The Juries Act (6 Geo. IV. c. 50), by which some seventy Acts or portions of Acts were repealed. "It leaves no ground for future complaint."—*Rep.*, xl. 375.

henceforward there could be no transportation for the first offence, and for the second offence a sentence of banishment need not imply forcible transportation.¹

Peel was not the only man who was learning by experience, nor was his own the only experience by which he learned. It was very rarely that the Crown Law-officers spent a number of years at their post, but that rare event happened at that time. Sir William Gifford never again risked arousing such deep public execration as he had incurred in marshalling the evidence against the Queen. In 1824 he was succeeded as Attorney-General by the Solicitor-General, Sir John Copley (later Lord Chancellor Lyndhurst), an exceedingly able lawyer who was bent on making a fortune by his professional exertions, and whose lack of principle was a byword among his colleagues at the Bar. He helped on the Freedom of the Press in much the same way as Charles II assisted in the development of Parliamentary Government. He did nothing rash and he did nothing harsh. As Attorney-General he never conducted a Crown prosecution for libel in the Court of King's Bench, though he did on occasion act as counsel to the Constitutional Association in private actions.²

Nor must the influence of Sir Charles Abbott, the Chief Justice, be overlooked, even though it cannot be accurately measured; for human nature renders impossible the complete separation of the holders of judicial and executive offices. With previous Chief Justices the link with the executive had been far stronger, as they were members of the House of Lords and sometimes of the Cabinet, besides giving advice in the choice of the Attorney-General and prompting him to use his powers. Abbott had risen to the Bench from being a barber's son; he personally had little to complain of in the existing system; and he may at first have had some hopes of ennoblement. He could not alter the Common Law, nor could he well invalidate brother Best's directions; but though there were some developments, there were no innovations

¹ 6 Geo. IV. c. 45. Also, by 6 Geo. IV. c. 119, the maximum size for newspapers was abolished, and they were henceforward allowed to be printed on sheets of paper of any size.

² Sir Theodore Martin, *Life of Lord Lyndhurst* (1883); J. B. Atlay, *Victorian Chancellors* (1905); W. Bagshot, *Biographical Studies* (1863), is less favourable; John Lord Campbell's *Lives of the Lord Chancellors* (1868) is still more scandalous.

in the Law of Libel during his Chief Justiceship. He had never been a successful advocate, he never abused defendants in libel cases, the liberty he allowed Carline in 1819 was almost unparalleled, and I know of no suggestion that he ever egged an Attorney-General on to prosecution. The suggestions made were the reverse. He indicated as clearly as possible in 1823 that he was tired of having the King's Bench brought into odium by what could be nothing else but mock trials, so far as the truth of the libels alleged was concerned. He hated to have the time of the Court wasted. His experience was not limited to his six years on the Bench; when still below the Bar he had prepared Attorney-General Sir John Scott's (Lord Eldon's) ex-officio informations; during his twenty years at the Bar he was still "devil to the Attorney-General," and drew all his informations for criminal libel; few lawyers had profited more by Press-prosecutions; none was better fitted to mark the difference between the 'twenties and the days of the Terror.¹

The growing liberalism of the Government in the eighteenth-twenties made for the non-enforcement of the Law of Criminal Libel, just as surely as it made for Peel's abolition of the capital penalty for a hundred crimes, and for the emancipation of trade unionists from the Combination Laws and of silk manufacturers from the Spitalfields Acts. The experience of Ministers and of prosecuting-societies warned them against giving publicity by prosecution, not only to the Radicalism and Deism of the past, but also to the new obscenity of the neo-Malthusians, and to the atheistical materialism that was taking the place of Paine's Deism with the circulation among the working classes of the writings of the French Encyclopædists, especially as both these new developments were intimately associated with Carline; for from 1824 onwards he was the most outspoken of neo-Malthusian propagandists; and the publication of Holbach's *System of Nature* was probably due to young Julian Hibbert (1801-34), who spent several thousand pounds in Carline's support.² If Ministers had

¹ Abbott had written the Oxford English Prize Essay of 1786 on *Satire*, summarized in Jerdan, *National Portrait Gallery*, ii. (1831). His Whig friend, John Lord Campbell (*vide infra*, ch. ix. sect. 3), described the "extraordinary excellence of the King's Bench as a Court of Justice," "during that golden age," when "law and reason prevailed."—*Lives of the Chief Justices*, iv. esp. 355 sqq.

² J. M. Wheeler, *Biographical Dictionary of Freethinkers*; James Watson's preface to Holbach, *Nature and her Laws* (1834); T. C. Campbell, *op. cit.*, pp. 245; Linton, *Watson*, pp. 18, 32.

needed any other excuse than their own experience, they could have pointed to "the march of mind," "the spread of intellect," "the diffusion of knowledge," among all classes. No one could any longer well argue that Radicalism was merely destructive, as it had certainly seemed to be in 1819. That agitation had left behind it reading-rooms and the habit of reading. The new Radicalism was constructive; it aimed as much at the improvement of the individual as at the reform of Parliament. It was a movement among the most intelligent of "the industrious classes," and not among "the lower orders" at large.

We shall understand yet more fully how the spirit of the age made for the Freedom of the Press if we turn aside to a brief consideration of the part poetry played in the struggle here, and also of the struggle which was being waged in other lands besides Great Britain.

2. POETRY AS CANNON-SHOT.

It is not surprising to find Shelley and Leigh Hunt among the Radicals, and Byron and Moore among the Liberals of more Whiggish circles, enlisted in the Struggle for the Freedom of the Press. But it was also the fate of one who had very little in common with this "diabolical school" of younger poets, except the fact that he, too, had once been young, to be drawn into the limelight in a way he little anticipated.

Robert Southey was now Poet Laureate, and as a "rancorous renegade" this most moral of men had become the butt of every Radical or Whig. But in his unregenerate days he had written a little play on the legend of *Wat Tyler*, making it the vehicle for much invective on war, taxes, Church, King, nobility, and injustice. For over twenty years the manuscript remained unpublished.¹ Then in 1817 it came inexplicably into a publisher's hands. Southey applied to Lord Chancellor Eldon for an injunction to prevent his copyright from being infringed, but the defendant's counsel defeated the application by quoting a previous decision of Lord Eldon's.² Dr. Wolcot, who as "Peter Pindar" had often

¹ "Ay, there's nothing like
A fair free open trial, where the King
Can choose his jury and appoint his Judges."—Act iii.

² Campbell, *Lord Chancellors*, x. 256 sq., quoting Southey v. Sherwood, in *Merivale, Reports*, ii. 435.

laughed at George III, had once similarly asked for an injunction to stop his publisher breaking an agreement. Eldon had then said:

It is the duty of the Court to know whether an action at law would lie; for, if not, the Court ought not to give an account of unhallowed profits of libellous publications. . . . I will see these publications and determine upon the nature of them, whether there is question enough to send to law as to the property in those copies.¹

If the Lord Chancellor thought that a work was libellous he could refuse to protect the author's property, even though no copy of the work in question had ever been found libellous by a jury. An action at law to recover damages from hawkers and pedlars was therefore the only means of redress left open to authors whose tastes happened to be different from those of Lord Eldon, and that was so expensive a procedure that it left the author without any means of redress whatever. But this decision meant, also, that anyone was at liberty to pirate any work which he thought the Lord Chancellor might think criminal. Lord Eldon's ruling thus had an effect the very reverse of what it was intended to have. No sooner had he refused to protect the Poet Laureate's copyright in the spring of 1817 than young Sherwin printed a twopenny edition, which Carlile carried round the Town along with Wooler's *Black Dwarf*. During the next five years he alone sold twenty-five thousand copies.²

Glory be to thee, O Southey! [he exclaimed]. I verily believe that I should not have been able to persevere in the sale of such publications, for want of a living profit, had not the application to the Court of Chancery to suppress the publication of *Wat Tyler* been made at that particular moment, and had not Mr. Sherwin printed an edition to sell for twopence and threepence. *Wat Tyler* yielded me an encouraging profit; *Wat Tyler* brought me acquainted with Mr. Sherwin; and *Wat Tyler* continued to be a source of profit when every other political publication failed. The world does not know what it may yet owe to Southey.³

Shelley's *Queen Mab* was similarly pirated and refused an

¹ Campbell, *Lord Chancellors*, x. 255, quoting Wolcot v. Walker in Vesey, vii. 1. A *nisi prius* dictum on Priestley's claim for compensation for his books burnt was the previous decision on which Eldon grounded this imposition on himself of the task of searching works for possible libels.

² *Rep.*, v. 119 (January 25, 1822).

³ *Ibid.*, vii. 674 (May 30, 1823). Carlile admired "that the best of thy productions." "Thy body is changed; thou art not now the Robert Southey of the last century; thy body shall die, but thy mind that produced *W.T.* shall never die."

injunction, and finally taken up by Carlile.¹ He had written it in 1812 when he was twenty, the year after he had been expelled from college for issuing a pamphlet on the *Necessity of Atheism*. Next year it was printed with copious notes, without even the printer's name, apparently because Shelley's bookseller did not agree with him that "a poem is safe; the iron-souled Attorney-General would scarcely dare to attack." Two hundred and fifty copies were printed, and about a quarter of them were privately distributed. A few years later Shelley parted from his wife, to whom he had dedicated *Queen Mab*, and in 1817 he was debarred from educating his children as the result of a Chancery suit in which his father-in-law, as the children's "next friend," had filed *Queen Mab* as evidence against him. In 1821 it was published for the first time by William Clarke, a struggling bookseller near St. Clement's in the Strand. Shelley wrote at once to his bookseller:

I hear that a bookseller of the name of Clarke has published a poem which I wrote in early youth called *Queen Mab*. I have not seen it for some years, but, in as much as I recollect, it is villainous trash, and I dare say much better fitted to injure than to serve the cause which it advocates. In the name of poetry, and as you are a bookseller (you observe the strength of these conjurations), pray give all manner of publicity to my disapprobation of this publication; in fact, protest for me in an advertisement in the strongest terms.

I ought to say, however, that I am obliged to this piratical fellow in one respect, that he has omitted, with a delicacy for which I thank him heartily, a foolish dedication to my late wife, the publication of which would have annoyed me, and indeed is the only part of the business that could seriously have annoyed me—although it is my duty to protest against the whole. I have written to my attorney to do what he can to suppress it, although I fear that, after the precedent of Southey, there is little probability of an injunction being granted.²

If Shelley really objected to the piratical publication at all, it was clearly because he thought the poetry was bad and the notes might be more likely to enrage the public than to convince them.

I am a devoted enemy to religious, political, and domestic oppression [he wrote in the *Examiner*]; and I regret this publication, not so much

¹ H. B. Forman, *Vicissitudes of Shelley's Queen Mab* (1887), privately circulated.

² Shelley to Ollier (June 11, 1821), in *Life* by Dowden (1886), ii. 413.

from literary vanity as because I fear it is better fitted to injure than to serve the sacred cause of freedom.

But he had little real objection even on the score of policy, as he showed in a letter to a friend:

A droll circumstance has just occurred. *Queen Mab*, a poem written by me when very young, in the most furious style, with long notes against Jesus Christ and God the Father and the King and bishops and marriage and the devil knows what, is just published by one of the low booksellers in the Strand, against my wish and consent, and all the people are at loggerheads about it. . . . You may imagine how much I am amused. For the sake of a dignified appearance, however, and really because I wish to protest against all the bad poetry in it, I have given orders to say that it is all done against my desire, and I have directed my attorney to apply to Chancery for an injunction which he will not get.¹

William Clarke was not restrained by injunction, but he was instead indicted at the instance of the Society for the Suppression of Vice. As soon as he heard of this indictment he offered to give up selling the work and hand over all copies of it to the Society, if only he could be let off all expenses. The Society's secretary would not agree, and Clarke was tried (October 21, 1822). He showed that he had himself printed a *Reply to the anti-matrimonial Hypothesis and supposed Atheism of Percy Byssche Shelley (sic)*,² and he argued that *Queen Mab* was no worse than Lucretius. The Chief Justice replied that Lucretius was as useless and had as bad an effect as *Queen Mab*, and he instructed the jury to decide as Christians

Whether such a book had any other tendency than that of undermining the divine system of Christianity and substituting atheism in its room.

The jury found Clarke guilty, but recommended him to the merciful consideration of the Court, in consequence of the extreme distress of his circumstances.

Though Clarke was sent to Coldbath Fields Prison for four months and was pledged to good behaviour for the next five years, for selling *Queen Mab* for 12s. 6d., Carlile had already taken it

¹ Shelley to Gisborne (June 16, 1821), quoted in *Life* by Dowden, ii. 416.

² This anonymous Reply was an attempt to substitute discussion for prosecution: "The decision of twelve Christians is no better proof of the truth of Christianity than the verdict of twelve Mahometans on the truth of the divine mission of Mahomet."—p. 73.

up and he had it sold for five shillings less.¹ He bought up the remainder of Clarke's edition and had a new title-page stuck on.² In July 1822 Shelley was drowned. Before the year was out Carlile had purchased the hundred and eighty copies remaining from the original private edition.³ Where he obtained them from we do not know; but he had been acquainted with the poem as early as 1817, when he wrote it over twice during his imprisonment for printing Hone's parodies. He would have published it then had Shelley given his permission.⁴ Then, when Carlile was released from prison in 1825, he started a joint-stock book company, and one of its very first publications was a half-crown vest-pocket edition of *Queen Mab*. It became especially popular among Owenites and vegetarians; Hetherington, Watson, and Linton all helped in the struggle for its publication. It was the only poem of Shelley's that played much part in working-class life, and the popularity it had was due entirely to the activities of those who made its publication in the first instance unsafe, to the judgement of Lord Eldon, who refused to prevent it from being pirated, and to the Society for the Suppression of Vice, whose challenge Carlile felt bound to take up.

Southey and Shelley had each one poem that played a part in the Struggle for the Freedom of the Press; but Byron's poems were constantly attracting legal attention from 1819 till after their author was dead. It would have been easy to charge *Don Juan* with being obscene, the *Vision of Judgement* with being seditious, both with being defamatory, and *Cain* with being blasphemous. But the value of poetry as cannon-shot lay partly in its power to go to greater lengths without bringing down on it the arm of law. Besides this, any litigation about a poem was bound to affect the whole community of readers and writers much more than the prosecution of a publisher of political works, especially as political prosecutions were a long-established habit, whereas the denial of copyright in some kinds of poetry was a recent innovation. Whenever a poem was brought into Court the injustice of the Law of Criminal Libel was demonstrated. Whenever a poem

¹ *Rep.*, v. 145 sqq. (February 1, 1822).

² British Museum Reading Room, 11641, dd. 5 (1822), and 11641, f. 53 (1823). Clarke himself seems to have sold it again in 1823.—British Museum 11641, dd.4.

³ *Rep.*, vi. 979.

⁴ *Ibid.*, v. 145 sq.

that was undoubtedly a criminal libel was left unprosecuted it helped to make plain how partial was the administration of the law.

In 1818 and 1819 Byron was at Venice writing the first two cantos of *Don Juan*. When the first was finished he asked the opinion of J. C. Hobhouse and others "with regard to the poetical merit, and not as to what they may think due to the *cant* of the day."¹ He soon heard that his "cursed puritanical committee" had protested against publishing, and had thrown "milk and water" on the first canto. "If they had told me the poetry was bad," he wrote to John Murray, "I would have acquiesced; but they say the contrary, and then talk to me about morality—the first time I ever heard the word from anybody who was not a rascal that used it for a purpose. I maintain that it is the most moral of poems; but if people won't discover the moral, that is their fault, not mine."²

Being "perfectly aware that *Don Juan* must set us all by the ears," Byron resolved to have fifty copies printed for private circulation, or else to have the two cantos published anonymously without the dedication to Bob Southey, the "epic renegade," and the attack in it on Castlereagh "cobbling at manacles for all mankind," so as not to "be shabby" and attack them "under cloud of night."³ Byron refused to alter anything. The poem must be the free expression of his own genius, or nothing at all.

You might as well make Hamlet act mad in a strait waistcoat as trammel my buffoonery, if I am to be a buffoon; their gestures and my thoughts would only be pitifully absurd and ludicrously constrained. Why, man, the soul of such writing is its licence—at least, the *liberty* of that licence, if one likes—not that one should abuse it. It is like Trial by Jury, and Peerage, and the Habeas Corpus—a very fine thing, but chiefly in the *reversion*, because no one wishes to be tried for the mere pleasure of proving his possession of the privilege.⁴

He had written for his own pleasure and with no idea of playing down to common prejudices:

Come what may, I never will flatter the million's canting in any shape. Circumstances may or may not have placed me at times in a situation to

¹ Byron to Murray (January 20, 1819) in T. Moore.

² *Ibid.* (February 1, 1819), *ubi supra*.

³ *Ibid.* (January 20, February 1, May 15, 1819).

⁴ *Ibid.* (August 12, 1819).

lead the public opinion, but the public opinion never led, nor ever shall lead, me. I will not sit on a degraded throne. . . .¹

His "modest publisher," John Murray, was in a fright. He did have the two cantos produced in the middle of July; but the title-page did not bear his name; the work was anonymous; it was printed in quarto; and it was priced at a guinea and a half.² But neither Murray, nor the printer, nor any of the booksellers whom Murray used as cat's-paws, was prosecuted for circulating the book.

Two years before William Hone, the bookseller, had contended for the same freedom for himself as for Canning. He had then been acquitted; but others who sold his Parodies were being prosecuted in 1819. So now he entered the lists with a demand for as much freedom for his own country agents as for John Murray. *Don John (Murray), or Don Juan unmasked*, was a key to the authorship and publication of the mystery poem, and a descriptive review with extracts from the work, the whole being sold for two shillings or less than one-fifteenth the price of the original.³ The whole pamphlet was an elaborately ironical argument in favour of impartial prosecution, all the passages most suitable for prosecution being set out ready for the Attorney-General or the Vice Society's choice.

Much was made of the parody on the Ten Commandments (Canto I, Stanzas 105, 106),

because they have been published by Mr. Murray in direct opposition to his friends of the *Courier* and *Quarterly*, in open contempt of Bills of Indictment and Crown-Office Prosecutions, and in utter defiance of Grand Juries and the King's Attorney-General.

The work itself [he said] proves more than ordinary care in the publisher, for there are several entire stanzas omitted, and it is not credible that Mr. Murray would let this *Parody* stand unless he knew he had the sanction of powerful men.

A footnote told the story of Joseph Russell, of Birmingham, and it ended thus:

¹ Byron to Murray (August 1, 1819).

² It was printed by Thomas Davison, of Whitefriars, for an obituary notice of whom see C. H. Timperley, *Dictionary of Printers and Printing* (1839), p. 919. I know no evidence to prove that he was identical with Carlile's Smithfield friend who published the *Cap of Liberty*, or for saying that he was later prosecuted, as S. C. Chew says in *Byron in England* (1924), p. 27 sq.

³ British Museum has 3rd edition.

Mr. Murray, who is known to be the most loyal and is reported to be the most opulent bookseller in the United Kingdom, and who is an official publisher of the Government,¹ actually publishes a Parody on the Ten Commandments of God whilst prosecution is pending against Russell for a Parody on the Litany, which is entirely a human composition; it remains to be seen whether the maxim so much vaunted in our Law Courts, that *Justice is even-handed and deals with all alike*, be true or not.

No other man but he who has Government support and Government writers to back him *dare* publish Don Juan as it now stands. Mr. Murray is too "respectable" to fear attack, or even insinuation for the *immoral* tendency of the Poem. He and his quarto book of 227 pages, with only sixteen lines to a page, and a magnificent circumference of margin, and a guinea and a half in price, may defy the Society for the Suppression of Vice and "the very place where wicked people go."

With what face can the King's Attorney-General rise in a Court of Justice before an enlightened auditory, and by Information to the Court on behalf of the King charge a defendant with publishing impiety, if this Government publisher go free of prosecution, for a work which, in the eyes of lawyers, must be eproous over all. . . . Dare the King's Ministers who are members of the Vice Society, with the society itself at the back, prosecute Mr. Murray?—*they dare not!* They are old hawks, to be sure, and may fly for a while at feeble sparrows; but *he* is a bird of too strong a beak and pinion for their attack. Even the Attorney-General dare not try a fall with Don John, who sings the Regent's favourite, "Glorious Apollo."

The little pamphlet ended with three pregnant sentences:

Lord Byron's Dedication of *Don Juan* to Lord Castlereagh was suppressed by Mr. Murray from delicacy to Ministers.

Question: Why did not Mr. Murray suppress Lord Byron's *Parody* on the Ten Commandments?

Answer: Because it contains nothing in ridicule of Ministers, and therefore nothing that *they* could suppose would be to the displeasure of Almighty God.

The challenge was not taken up; but anonymity had the effect of calling forth a number of anonymous continuations.² One of them, published by Hone soon after the "Manchester occurrence," related Don Juan's adventures as a Radical "news-retailer" in the City, till he was arrested by a City marshalman, taken before the "worshipped bashaw" of a Lord Mayor who was in deadly

¹ "The Publisher to the Board of Longitude and of the *Quarterly Review*, the Bookseller to the Admiralty, and a strenuous supporter of orthodoxy and of the Bible Society."—Hone, *op. cit.*, p. 33.

² Byron to Murray, Byron to Hoppner (October 29, 1819), *ubi supra*.

fear of a new gunpowder plot, and imprisoned in the Compter because he had not given long enough notice of bail.¹ The two genuine cantos were also pirated and produced in four small shilling editions.² This made Murray think of applying for an injunction for the preservation of his copyright. "You may do as you please," Byron wrote to him, "but you are about a hopeless experiment; Eldon will decide against you, were it only that my name is on the record. You will also recollect that if the publication is pronounced against on the grounds you mention as *indecent and blasphemous*, that *I* lose all right in my daughter's *guardianship* and *education*—in short, all paternal authority, and everything concerning her. . . ."³

A poem by the greatest poet of the day may have been a best-seller; but there was little to be gained by being its original publisher when there was no lack of pirates in London and in Paris, and no means for restraining them.⁴ Byron was confident that *Don Juan* will be known, by and by, for what it is intended—a *satire* on *abuses* of the present states of society and not an eulogy of vice.⁵ But few of Mr. Murray's writers or customers shared that opinion; nor did that alter the fact that the Lord Chancellor would not protect Mr. Murray's copyright. So he brought out only one more batch of cantos, the remainder being published by John Hunt.⁶

An injunction to prevent the breach of copyright was applied for. The agent of a piratical publisher therefore appeared before the Court of Chancery, and there stated that *Don Juan*, which he had been publishing and still desired to publish, had been wrongly represented as a harmless book containing nothing improper or immoral, whereas the truth was, on the contrary, that it was highly coloured, immoral, licentious, likely to produce the very

¹ W. Hone, *Don Juan, Canto the Third* (1819).

² One such was printed by and for Sherwin & Co., of Paternoster Row (1820), presumably the ex-republican.

³ Byron to Murray (December 4, 1819), *ubi supra*.

⁴ I have, e.g., a pocket edition of Cantos I to V, published by Benbow in 1822. Dugdale (*vide infra*) was an agent of Benbow.—J. Hunt to J. C. Hobhouse (December 3, 1823), in Broughton Correspondence in Brit. Mus. Add. MSS. 36560, f. 169.

⁵ Byron to Murray (October 25, 1822), *ubi supra*.

⁶ Murray published Cantos III to V, toned down by the omission of the attack on Wellington (now in Canto IX). Hunt published Cantos VI to VIII; IX to XI; XII to XIV (1823); XV, XVI (1824). There were also some spurious continuations.

worst effects on the minds of those that read it, being positively destructive of the moral feelings of the community—in fact, it was so infamous that it deserved to be pirated and sold as widely as possible.

The Vice-Chancellor therefore dissolved the injunction (*Byron v. Dugdale*, August 9, 1823).¹ No such decision attracted so much attention. It seemed to imply the principle of allowing anyone and everyone to take the law into their own hands, and injure anyone and everyone whose activities were obnoxious to those in authority.²

The reply of John Hunt's *Examiner* was unanswerable:

It is said, we know: "Are immoral books to be protected by the Court?" We answer, *first*, that *as property* they have as much claim to protection as any other books; *secondly*, that no Judge has a right to call them immoral until a jury has pronounced them so; *thirdly*, that if they *are* immoral there are criminal laws and courts to punish their authors and publishers; *fourthly*, that the Chancery has no concern whatever with the guilt or innocence of a book, its jurisdiction being strictly confined to questions of property. A distinction must be made between the office of different tribunals and the nature of offences cognizable in each. . . . For instance, a man engaged in an illegal act may yet be illegally assaulted.³

The same facilities for circulation were granted also to the pirates of *Cain, a Mystery*. Byron dedicated it to Sir Walter Scott, who, Tory though he was, was poet enough to "accept with feelings of great obligation the flattering proposal of Lord Byron to prefix my name to the very grand and tremendous drama of *Cain*."⁴ It was easy to answer the cry of blasphemy that was raised, and Byron did so in a letter which John Murray sent to the papers.

If *Cain* be blasphemous, *Paradise Lost* is blasphemous . . . *Cain* is nothing more than a drama, not a piece of argument. If Lucifer and

¹ It was reported that Sir John Leach (Vice-Chancellor) said: "A work may not be in its nature the subject of an indictment for libel, and yet it may be of so flippant a nature as not to deserve the protection of this Court." The *Examiner* replied: "What right has a Judge to talk of any other guilt than that recognized by the Law?"

² "Housebreakers might carry off too classical statues. Shoplifters, again, might be rendered instrumental to the cause of loyalty and morality in print and caricature shops, etc."—*Morning Chronicle* (August 16, 1823).

³ *Examiner* (August 17, 1823).

⁴ Lockhart, *Life of Scott*, ch. xii.

Cain speak as the first murderer and the first rebel may be supposed to speak, surely all the rest of the personages talk also according to their characters—and the stronger passions have ever been permitted to the drama.

I have even avoided introducing the Deity as in Scripture (though Milton does, and not very wisely either). . . . The old Mysteries introduced him liberally enough, and all this is avoided in the new one.

The attempt to bully *you* (John Murray), because they think it won't succeed with me, seems to me as atrocious an attempt as ever disgraced the times. What! when Gibbon's, Hume's, Priestley's, and Drummond's publishers have been allowed to rest in peace for seventy years, are you to be singled out for a work of *fiction*, not of history or argument? . . .¹

But many were not convinced by the argument. Hobhouse, like Murray, had remonstrated against the publication. Tom Moore was no canter, but living "near the stove of society," where he was "unavoidably influenced by its heat and its vapours," his pursuit of "sceptic ease" led him to such "modesty in unbelief as well as belief" that even he regretted Byron's popularization of the "deadly chill" of Cuvier's notion that other animals existed before men.² Benbow pirated it, as he pirated everything else that anyone was likely to object to, and the Lord Chancellor, who had notoriously little knowledge of literature, refused to give Murray any redress.³

This was not the end of *Cain*. There came rumours of prosecution. Even *Blackwood's Magazine* differed entirely from the Chancellor, and thought it would be a shame if *Cain* were prosecuted. "The humbug of the age will then have achieved its most visible triumph," wrote Maginn.⁴

Carlile also took up the cudgels as he had done in the cases of Southey and Shelley:

If after the decision of the Chancellor that the publication is more fit to be prosecuted than protected as private property the Attorney-

¹ Byron to Murray (February 8, 1822), *Annual Register*, p. 27.

² Moore was so proud of his protestation (February 19, 1822) that he printed it in his *Life of Byron*. Cf. Byron to Murray (March 4, 1822).

³ J. Campbell, *Lord Chancellors*, x. 257, citing *Jacob's Reports*, 474 n.

⁴ *Blackwood's*, xi. 37 (March 1822), *Noctes Ambrosianae*, i. 24. The words are put into the editor's mouth. He adds: "The Society might have had some pretence had they fallen on *Don Juan*; but I suppose those well-fed archdeacons and so forth have their own ways of observing certain matters."

General, or the Vice Society either, shrinks from the challenge of Lord Byron, what am I, what is the public, to think of their honesty, courage, or impartiality? . . . To stimulate them to this prosecution I purpose to publish an edition of *Cain* at sixpence. I would respect the property of Lord Byron or Mr. Murray, if the Lord Chancellor had done his duty and protected *Cain* as he ought to have done; but as he has encouraged Mr. Benbow in his piracy, he has made it a sort of common property. I further purpose to show this gentleman how easy it is for one person to undersell another, and how far his edition of *Cain* is from being a cheap edition. . . . I shall confine myself to *Cain* as a publication within my line of business; I do not mean to follow Mr. Benbow in pirating other works of Lord Byron. I take *Cain* under my protection because a prosecution and suppression is threatened.¹

By the autumn of 1821 Byron had written another libellous poem called the *Vision of Judgement*, in which he satirized and parodied a recent poem of the same name by Southey. The attack in the preface on "apostate Jacobins," the description of the arrival of George III. at the Celestial City, and St. Peter's judgement on hearing of the King's opposition to Catholic emancipation, were too much for Mr. Murray. By the winter Byron was thinking of distributing it privately, in the hope that it would be pirated.² The Constitutional Association was still active, and by the spring we hear that "the [*Vision of*] *Quevedo* (one of my best in that line) has appalled the Row already, and must take its chance at Paris, if at all."³ Murray had just published *Cain*, and had found that in the Lord Chancellor's eyes it was blasphemous. At that juncture Leigh Hunt arrived in Italy at the invitation of his friend Shelley. His health was bad, his funds were low, and his brother John was having a hard struggle to keep the *Examiner* floating, especially owing to his imprisonment for libelling the House of Commons. Byron disliked Leigh Hunt, and Moore and his other Whig friends did not want to see him annoying the critics by co-operating with a Radical who had a bad reputation in fashionable circles; but the boldness of John Hunt was just what was wanted for the publication of the *Vision*. Leigh Hunt edited a five-shilling periodical of 164 pages, which he called the *Liberal, or Verse and Prose from the South*. In it was a poem left by Shelley who was drowned at the very time Hunt was relying

¹ *Rep.*, v. 343 (March 15, 1822).

² Byron to Kinnaird, February 6, 1822.

³ Byron to Moore, March 4, 1822.

on him for the success of the *Liberal*, and some essays of Hazlitt's and much work of his own, and above all Byron's *Vision*, which Leigh Hunt reckoned "the best satire since the days of Pope,"¹ and which his brother was willing to publish entirely at his own risk.² Soon afterwards another instalment of *Don Juan* was ready, and this, as we have seen, went also to John Hunt; he could hardly hope for copyright, but he had as good a field as any of his pirate competitors. The *Vision*, however, brought him into worse difficulties. All contributions to the *Liberal* were anonymous, though they were all by well-known authors, and the "puzzlement and posement" that naturally resulted led to some very disparaging criticisms in quite unexpected quarters.³

Those were the days when the Constitutional Association was sinking to its end under the blows of the lawyers and Carlile and Place. John Hunt was a friend of Place, his *Examiner* was always scrupulously fair to Carlile, and it was one of the deadliest opponents of the Constitutional Association as well as of the unreformed Constitution. So the expiring Association struck its last blow at one of the chief Radical journalists. He was indicted in December 1822 for publishing a defamatory libel of and concerning his late Majesty, and also of and concerning his reign, death, and burial. This was the first indictment for publishing a poem.⁴ More than a year later (January 15, 1824), when the Constitutional Association was otherwise defunct, John Hunt was brought to trial for publishing a poem which the Attorney-General had passed over. He was found Guilty after Chief Justice Abbott had said, in directing the jury, that "he had no hesitation in saying . . . that a publication tending to disturb the minds of living individuals, and to bring them into contempt and disgrace by reflecting upon persons who were dead, was an offence against the law."⁵

One could have understood his saying that criticisms of the dead were illegal if they tended to bring the living into contempt, but it was hard to see why he referred to the tendency to disturb the mind of the present king. *The Times* poured scorn on this

¹ *Autobiography*, ch. xx.

² Moore to Murray (July 6, 1822).

³ E.g. *Scotsman*, quoted by *Morning Chronicle* (November 8, 1822).

⁴ Stanzas 8, 9 (part), 43 (part), 44, 45 (part), 47 (part).

⁵ *State Trials* (N.S.), ii. 98, following *Examiner* (January 18, 1824).

"totally new ingredient . . . in the character of a libel," and reprinted the libellous stanzas *in extenso*, much to the disgust of Ministerial papers.¹

Degraded as is the character of *The Times* newspaper [said the *New Times*], we still did not think that that journal would have had the audacity to republish the whole of Lord Byron's infamous libel on our late venerable and lamented King; yet in its pages of yesterday every stanza of that foul and odious composition is inserted, occupying, in small and close-printed type, four whole columns.²

Carlile said:

THE VISION OF JUDGEMENT SHALL NOT BE SUPPRESSED. It is a . . . piece of squibbery on which I set no value, nor do I think it in any degree useful; but the principle which seeks to suppress it is base and malignant, and against that principle I will war. SUCH PROSECUTIONS SHALL NO MORE SUCCEED. By purchasing No. 10 of this volume of the *Republican* the *Vision of Judgement* shall be had for sixpence.³

And so it came about that Carlile once again made cannon-shot of Byron's poems:

Of *Don Juan* [he said] I have not read the whole, and some half-dozen of the last cantos which I have read were, and are, in my opinion *mere slip-slop*, good for nothing useful to mankind. *Cain is a Mystery*, and there is but little if anything to be learned from it. I republished that and the *Vision of Judgement* not from any admiration of the works, but because I saw them menaced by my enemies. I am not a poet, nor an admirer of poetry beyond those qualities which it might have in common with prose—the power of instructing mankind in useful knowledge.⁴

A few months more and Lord Byron was dead. Then in June 1824 John Hunt was sentenced for the third time, not to banishment, nor even to imprisonment, but to a fine of £100, and to give sureties to the amount of £2,000, himself in £1,000 and two others in £500.⁵ That meant that John Hunt had to make others

¹ *The Times*, January 16, 17, 1824; *Globe*, January 16th.

² *New Times*, January 17th. It argued that all George III's subjects had a right to feel as his sons, and have their minds disturbed by a libel on the father of the country.

³ *Rep.*, ix. 289 sq. (March 5, 1824).

⁴ *Ibid.*, xi. 84 (1825).

⁵ "This affair was settled this morning, and in some respects more happily than I expected. . . . The fine I expect (but am not sure) will be part returned to me by Lord Byron's executors. . . . The bail business is a vexatious one,

responsible for the *Examiner*. But that same month saw the end of the system of almost continuous prosecutions for criminal libel, whether by a subscription-society or by the Government.

The poet and his publisher were benefited by the struggle for freedom of expression; and those engaged in the struggle found in poetry a most useful instrument. It attracted more attention than any other, and it found support among those who were not interested in political freedom or were as Tories opposed to Radical Reform. It struck a blow at the enemy where he was weakest; for the Home Secretary and the Attorney-General held aloof, thus failing to enforce the law impartially; a prosecuting-society tried only once to fill the gap, and then the victory it won was as useless as a defeat; and when Lord Chancellor Eldon and his Vice-Chancellor were called on to man the breach, they were committed to a policy of abandoning the one line of defence that remained: the limitation of the circulation by the protection of the original publisher's copyright.

3. OVERSEAS INFLUENCES.

The Struggle for the Freedom of the Press in Great Britain gained strength from the knowledge that it was not an isolated experiment, but was, rather, a local development in a world movement. From America, India, and Greece, from Germany and from France, the countries that Britishers knew best, came news that encouraged those who were struggling here for freedom.

The United States were before the eyes of European democrats throughout the nineteenth century as an example to be imitated. Bentham, for instance, never tired of telling his Spanish friends that "in that seat of ever undisturbed internal peace, concord, tranquillity, and amity" the government undoubtedly desired "to see the Press in possession of all that liberty which is conducive to the greatest happiness of the greatest number—and of no more than all that liberty."¹ "No prosecution," he wrote, "can there

and, though I have found sureties, troubles me. Of course the death of Lord Byron is a heavy blow to me, as I had only just begun to obtain some advantage from the connection."—John Hunt to Leigh Hunt (June 19, 1824) in Leigh Hunt Papers in Brit. Mus. Add. MSS. 38108, f. 523.

¹ J. Bentham, *Letters to Count Toreno on the Proposed Penal Code* (publ. 1822) in *Collected Works* (ed. Bowring, 1843), viii. 487.

have place for anything written against the Government or any of its functionaries as such."¹

It was well known that this freedom had not been won without a struggle. The colonials had chafed at the Common-law rule that any publication with a possible evil tendency was criminal.² Most States, therefore, included a declaration of their right to a Free Press in their ratifications of the Federal Constitution, and the Constitution was amended in this sense in 1791. But it was by no means certain what was meant by the Freedom of the Press. Alexander Hamilton held that no definition could be given which would not leave the utmost latitude for evasion. "Its security," he inferred, "whatever fine declarations may be inserted in any Constitution respecting it, must altogether depend on public opinion and on the general spirit of the people and the Government."³ The criminality of a libel was to be left to the jury: but England also adopted that rule in 1792. Previous censorship was implicitly forbidden; but might not subsequent punishment be tolerated as quite consistent with the Liberty of the Press, according to the Blackstonian sophistry? That was the view of some of the early Federal Judges, and Hamilton's Federalist Party took that line. From 1798 to 1801 a Federal Sedition Act was accordingly in force. But at the elections of 1800 the party that passed that Act collapsed completely and was never resuscitated; Jefferson denounced that Statute as an infringement of the Law of the Constitution; he pardoned all prisoners convicted under it, and Congress paid their fines. So sensational an end to the attempt to impose a statutory Law of Seditious Libel on the free people of the United States could not escape the notice of British observers.⁴ Perhaps they did not know that in the separate States the Common Law remained, and that direct incitement to definite illegal acts was still a crime; but even there the test of criminality

¹ J. Bentham, *On the Liberty of the Press—to the Spanish People* (written 1820, publ. 1821), *ubi supra*, ii. 277. See also v. 246, ix. 37 sq., x. 512 sq.

² Chafee, *Freedom of Speech*, pp. 22 sq., citing the trial of J. Peter Zenger, a New York printer (State Trials, xvii. 675).

³ *Federalist*, No. 84 (1788).

⁴ Bentham, *On the Liberty of the Press* . . . published by Hone, July 1821. That same month Henry Cooper told the same story in his defence of Miss Carlile against the Constitutional Association: whether he had read Bentham's latest pamphlet, I do not know; he had himself been to America. Also leading articles in *Traveller* (July 25th) and *Morning Chronicle* (July 27th).

ceased to be the often remote possibility of a publication having an undesirable tendency, and both parties recognized the unconditional Freedom of the Press "to publish, with impunity, truth, with good motives, for justifiable ends, though reflecting on government, magistracy, or individuals."¹

That Englishmen should be struggling for the Freedom of the Press at Calcutta and Madras was hardly to be expected. Yet events were moving in India even more quickly than in Britain. In 1799, during the Revolutionary War, Lord Wellesley established a Press Censorship which continued in force until 1818, when Lord Hastings, then Governor-General, brought it to an end in Bengal, an example which Elphinstone soon followed in the Presidency of Bombay.

Just at that time a man named James Silk Buckingham (1786-1855) came upon the scene. In the joint occupation of seaman and merchant he had conducted navigation and commerce in the Near East ever since he obtained his first maritime command at the age of twenty-one. In 1818, after a previous rebuff, he obtained a licence permitting him to enter Bengal. While there he received instructions from his employers to sail to Zanzibar to embark slaves under the Arab flag, and rather than do this he resigned his command, abandoned the maritime profession, turned editor, bought up two newspapers, and on their ruins established the daily *Calcutta Journal*, which was so successful that it soon brought him in an income of £8,000 a year.

In June 1819 Buckingham reported in his paper that he had received a letter from Madras written on mourning paper with a deep black border, and communicating, as a piece of melancholy and affecting intelligence, the news that the confirmation of the Governor in the Madras Presidency for three years more was considered a public calamity. He was thereupon sent a copy of an official regulation signed by John Adam as Chief Secretary in August 1818, from which Buckingham learned that the Press was far from being free, although the censorship had been abolished.

¹ Alexander Hamilton, defending a Federalist who libelled Jefferson, in *People v. Cresswell* (1804); this definition was adopted in the New York State Constitution (1821), and subsequently in very many others. Quoted, Chafee, *op. cit.*, 4, 25; also 29, 165, 169 sqq.

Newspaper editors were forbidden to publish

1. Animadversions on the measures of the Directors of the East India Company or the Board of Control or the Governor in India, or any offensive remarks on the Members of Council, the Judges, or the Bishop of Calcutta.
2. Any discussions tending to make the Indians suspect an intention of interfering with their religion.
3. Any private scandal tending to excite dissension in society.

This meant that the rules which had previously guided the official censors previous to publication were now to be enforced by the courts instead of by the executive. A literal interpretation of this prohibition would have made the Freedom of the Press entirely nugatory, just as a regular enforcement of the English Law of Criminal Libel would have done here.

It was quite possible, however, that the regulation imposed a merely nominal restriction, with the object of reconciling the Proprietors and the Board to a very liberal measure. This seemed to be the Governor-General's opinion. A public meeting was held at Madras in May 1819 to congratulate him on the success of his measures, and Colonel Leicester Stanhope said, in seconding the motion, that the establishment of a Free Press in Asia was, in his estimation, the most magnanimous act of the Marquis of Hastings' Administration: the Government had courageously done away with its censorship of the Press, and had made the Press a censor of the Government. An address in this sense was signed by most of the leading men of Madras, and it was presented to Lord Hastings, who said in reply that it had been his habit to regard the Freedom of Publication "as a natural right of his fellow-subjects," but that he had also been guided by well-weighed policy:

If our motives of action are worthy, it must be wise to render them intelligible throughout an Empire, our hold on which is Opinion. Further, it is salutary for supreme authority, even when its intentions are most pure, to look to the control of public scrutiny. . . . That Government which has nothing to disguise wields the most powerful instrument that can appertain to sovereign rule: it carries with it the united reliance and effort of the whole mass of the governed, and let the triumph of our beloved country, in its awful contest with tyrant-ridden France, speak the value of a spirit to be found only in men accustomed to indulge and express their honest sentiments.

In Madras the Press had no freedom, and that made the Governor-General's remarks the more striking. The "Censor of Heretical Pravity," as Stanhope called him, there suppressed a Tamil translation of a Unitarian liturgy and suppressed much of the news of the Queen's defence. But what was cut out at Madras was printed at Calcutta; the Madras postmaster therefore imposed a surcharge on the *Calcutta Journal*; Buckingham reported this and stated what new arrangements this necessitated; the Chief Secretary at Calcutta at once reprimanded him, demanded an immediate apology, and then found out that the postmaster was in the wrong. On a third occasion Buckingham was reprimanded, this time for publishing an anonymous letter reflecting on the Bishop of Calcutta, and he was now threatened with the withdrawal of his licence of residence. He was indicted for a libel on the Secretaries to the Government; but he was acquitted by a petty jury. A criminal information was filed against him for libellous remarks on this case; but he was not brought to trial. In August 1822 he declared that the Act of Parliament 53 Geo. III. c. 155 gave the Governor-General no power of banishment without trial for Press offences. The Acting Chief Secretary thereupon threatened to cancel Buckingham's licence if he discussed that statute again or disregarded an injunction from the Government. But so long as Lord Hastings ruled that threat was not carried out.

In 1823 Lord Hastings retired, and the senior member of the Council succeeded temporarily to the Governor-Generalship. That man happened to be John Adam, who had issued the Regulation of 1818. For a while Buckingham therefore scrupulously avoided all breach of Adam's Regulation in the hope that a properly appointed permanent Governor-General would put the Freedom of the Press on a firm legal basis. But another paper, *John Bull*, which was in favour with John Adam, was allowed to calumniate Buckingham daily in breach of the last section of the Regulation, and in February a clerkship to the Committee for Stationery was given to an editor of *John Bull*. The new purchaser of stationery was also a Doctor of Divinity and the minister of the Scottish Church in Bengal. Buckingham could not forbear laughing at such incongruous pluralism, especially on the part of a man who had previously edited another paper which the *Calcutta*

Journal had driven clean out of the field. Buckingham was thereupon notified that his licence of residence would be void from February 15, 1823. He was accordingly "transmitted" to England. In 1833 a Select Committee of the House of Commons was appointed to consider the circumstances connected with the suppression of the *Calcutta Journal*, and it resolved unanimously that compensation ought to be made to Mr. Buckingham for depriving him of an income of £8,000 a year, and both him and other shareholders of a capital of £40,000. But the responsibility for making amends rested with the Company and not with Parliament. The Acting Governor-General had not stopped short at the deportation of Buckingham. He had issued a new Press Ordinance forbidding the publication of any periodical or newspaper without a licence signed by the Chief Secretary and withdrawable at pleasure, because, as the preamble said, "matters tending to bring the Government into hatred and contempt, and to disturb the peace . . . have of late been frequently published and circulated in newspapers." The Court registered the new Ordinance without taking the least notice of the memorial drawn up by Ram-mohun-Roy, the father of Bengali journalism. Buckingham's *Journal* was suppressed. The more critical of Ram-mohun's vernacular papers ceased to appear, and the Privy Council turned down his appeal against the Ordinance. After this episode, however, progress was rapid. In 1828 Bentinck became Governor-General, Benthamism made great strides, and the restrictions on the Press were only nominal. Under his successor they were altogether removed, and for the next forty years the Press of India was free.¹

¹ The four chief sources for the history of this episode are: First, *A Faithful History of the late Discussions in Bengal* . . . (1823, Calcutta), containing copies of Buckingham's correspondence with the Government, circulated privately; second, Leicester Stanhope, *Sketch of the History and Influence of the Press in British India* (1823); third, the "Calcutta Journal" Committee, *Report*, 1834 (601), viii. 1; fourth, Sophia Dobson Collet, *Life and Letters of Raja Rammohun Roy*.

Also *Commons Journals*, lxxxi. 341 (1826) and lxxxix. 356, 360, etc. (1833); *Accounts and Papers* 1835 (393), xxxix. 171, and 1836 (165), xl. 405; autobiographical *Sketch of Buckingham's Life, Travels, and Political and Literary Labours* (1829); *Biographical Sketch of J. S. Buckingham*, reprinted from *Lives of the Illustrious* (1853); *Scotsman*, April 13, 1822, concluding, "A liberty so fenced round with dangers is a snare and not a privilege."

Buckingham established the *Athenæum*, and represented Sheffield in the Reformed Parliament. Ram-mohun founded the Brahma Somaj and died in

Colonel Leicester Stanhope was a veritable knight of the Free Press. From Madras he came to London, and tortured the East India Company proprietors with interminable orations in praise of the Freedom of the Press. Then a committee of English Radicals sent him to Greece for the first half of 1824, with some money and some printing-presses. Before he had been at Missolonghi three weeks he had set up a hand press that was free from the interference of the rival Greek factions. There with the aid of a Swiss scholar he issued a newspaper, and a translation of part of Bentham's pamphlet *On the Liberty of the Press*. In a country which had hitherto boasted only two printing-machines he carried out much propaganda on behalf of publicity, offering lithographic and hand presses to men and communities if they would pledge themselves to the impartial pursuit of truth. At first Byron and some of the other volunteers repeated the usual commonplace about a Free Press being unsuited to a primitive and highly combustible state of society; but before many months were passed there was a rage for newspapers in all the languages of Babel, and Greek patriots were charmed with the idea of a Free Press "which will have the power of exposing and censuring the misconduct of everyone," as one General put it.¹

Great as was English interest in the East and in the West, it was in Western Europe that the Press had to struggle hardest against the spirit of despotism, for it was here on the Continent that the "legitimacy vampire" was most vigorous, and from here alone that both sides in the struggle received moral reinforcement. In 1819 every German State was made responsible to the German Federation as a whole for licensing or suppressing the periodicals published within its borders. A year later Prussian and Austrian remonstrances ended the freedom of the democratic Press in the

England; he knew Stanhope, Bentham, and W. J. Fox. Miss Collet was the sister of the English Radical who organized the final repeal of the Taxes on Knowledge.

¹ Leicester Stanhope, *Greece in 1824*. He had great faith in "the thoughts of the finest genius of the most enlightened age—the thoughts of the immortal Bentham." Bentham and Bowring were partly responsible for this effort "to spread the light of the nineteenth century, and cause it to act on the destinies of the Greek nation." In five months Stanhope spent £250 of his own money and £120 of the Committee's in setting up free presses, this being over half of his total disbursements. See also Dora Neill Raymond, *Political Career of Lord Byron*, pp. 255 sqq.

liberal duchy of Weimar.¹ The condition of the British Press was the despair of Continental rulers. Frederic von Gentz, the right-hand man of Metternich and the most distinguished of German absolutist writers, penned some excellent *Reflections on the Liberty of the Press in Great Britain*.² "The present situation of the British Press," he wrote, "is neither more nor less than a state of absolute anarchy occasionally interrupted by the feeble checks of an arbitrary discretion accidentally aroused." He had once been an enthusiastic admirer of Burke and Pitt, and had been in Grenville's pay for many years; but now he no longer put any reliance in the half-measures of repression, which were all the British aristocracy could indulge in in face of the wide dissemination of elementary education in this island: "The case of Hone . . . made manifest the long since decided victory of the Press of the Populace over the State, and exhibited the victory in features so gigantic that, if the Ministry do not devise some new legislative remedies or call some new forms of prosecution to their aid, perhaps the wisest determination would be to renounce entirely those criminal prosecutions and to abandon the Press to its own deliriums." In 1819 those *Reflections* were translated into English. That same year new laws were devised; but the course of subsequent events made the abandonment of the Press to its own devices none the less inevitable. In other countries besides Britain it was to become plain that "neither art nor force can stop the turn of the world-wheel."³

In France also reaction rose to the ascendant in the very year that the Queen's Affair made impartial repression impossible in Britain. The Duke of Berry was murdered, and for the next ten years France was ruled by different shades of ultra-royalists and ultramontanes. Boards of Press-censors were formed all over the kingdom, and at their head was Bonald with his belief in the unreasonableness of mankind in general and journalists in particular.⁴ It was reckoned that on an average one-third of the *Constitutionnel* was cut out each day, and such huge securities

¹ *Annual Register* (1820), p. 211.

² Published in pamphlet form, 1819; see especially pp. 93, 95. Reprinted in *Pamphleteer*, xv. 455 sqq. (1820).

³ P. L. Reiff, *Friedrich von Gentz (1764-1832), an Opponent of the French Revolution and of Napoleon* (Illinois, 1912), p. 155.

⁴ "Man thinks out his speech before he speaks out his thought. So far from being the product of thought, speech is the essence of it."

were demanded that none but men of great capital could venture to publish a periodical; and men of capital are usually timorous.¹ In 1828, when the "priest party" was becoming more and more obnoxious to all thinking people, and deputies and electorate were prepared to vote against a government whose policy remained almost unchanged whoever the Ministers might be, much attention was attracted by the imprisonment and fining of Béranger and his bookseller for poems ridiculing "Charles the Simple" and exciting hatred against the "grey-beard Bourbons" and their "gerontocracy," as well as for laughing at the Jesuits. With great relish the London newspapers reproduced all the libellous verses. "It is altogether a foolish affair," commented the *Morning Chronicle*, "and men in power will find that out to their cost ere long, or we are much mistaken."²

Public opinion does not stop short at natural barriers or national boundaries. Tories were proud of the difference between British liberty and Continental despotism; Liberals of all kinds feared engulfment in the intolerance of the Holy Alliance; Radicals looked to the United States as the great exemplar. Britain and British India led Europe; America led Britain; and from their knowledge of the March of Mind in all three continents those men and women in Britain who were working for the Freedom of the Press gained strength and confidence.

¹ Survey in *Scotsman* (January 5, 1822) and in *Pamphleteer*, xxiv. 59 sqq. (1824).

² December 15, 1828, *Place Collection*, lxi. 124-27.

CHAPTER NINE

THE CONCLUSION OF THE STRUGGLE, 1829-31.

1. RELIGIOUS EMANCIPATION: TORY PROSECUTES TORY, 1829-30.
2. RURAL REPRESSION: WHIG PROSECUTES RADICAL, 1830-31.
3. THE OUTCOME, 1832-43.

1. RELIGIOUS EMANCIPATION: TORY PROSECUTES TORY, 1829-30.

IN the autumn of 1826 George IV's second Parliament was elected. Religious feeling ran high in both islands. Ireland returned a majority of "Catholics"; Britain returned a majority of "Protestants," elected on a "No Popery" cry. But before any decisive clash of religious parties could occur in Parliament the year 1827 had to be spent in ministry-making. There were four different Prime Ministers in twelve months. Lord Liverpool's complete mental and physical collapse in February 1827 split both Parliamentary parties from top to bottom. The Duke of Wellington struck work. Lord Eldon left the Woolsack for ever. Wetherell ceased to be Attorney-General. Peel left the Home Office for a while. All who deserted Canning and the King were pursued with the execrations of the whole Press.¹ In their place a liberal coalition, with Canning as Prime Minister, the colourless Copley as Lord Chancellor with the title of Lyndhurst, and Scarlett, a Whig of the Burke and Mackintosh school, as Attorney-General.

Sir James Scarlett was the greatest advocate of the day, and was noted as a successful counsel for the prosecution in sedition and in libel trials. It was he who had obtained the conviction of Orator Hunt for calling the Manchester Meeting in 1819. His office under the Crown did not prevent him acting as counsel for a horse-dealer who brought an action for damages against the *Sunday Times*.² Neither he nor any other Minister prevented Cobbett from being threatened with prosecution for not attending

¹ C. S. Parker, *Sir Robert Peel*, ii. 482 sq. (April 1827).

² *East v. Chapman*, in *Annual Register* (1827), p. 312.

to the strictest letter of the law regarding newspaper-stamps. Instead he defended the imposition of the stamp on weeklies when Hume asked leave to bring in a Repeal Bill on the Publications Act of 1819. Only ten members, among whom was Hobhouse but not Burdett, followed Joseph Hume and Alderman Wood into the lobby in favour of better treatment for cheap periodicals, now that circulating libraries and mechanics' institutions had replaced the turbulence of the "manufacturing classes" of ten years before.¹

Canning died before his ministry was six months old. Until the end of the year his place was filled by Robinson as Lord Goderich and Lyndhurst and Scarlett continued to hold the same posts as under Canning. But the King favoured the Tories while the Prime Minister leaned towards the Whigs. The coalition therefore ended, and by the beginning of 1828 the Duke of Wellington had begun to rule, Peel had returned to the Home Office, Scarlett had resigned; Wetherell had replaced him as Attorney-General, and Lyndhurst remained Lord Chancellor.

The religious question now had to be dealt with. Some Non-conformists were in favour of Catholic emancipation; some had shown themselves good Protestant citizens even by voting for Tory candidates against "Catholic" Liberals. Both sections of them seized the opportunity to agitate for the repeal of the Test and Corporation Acts. To reward their supporters and to pacify their opponents the Tory Government abolished the humiliating distinctions that differentiated one class of Protestant subjects from another. It was not long before an even greater degree of emancipation and equality had to be granted to Roman Catholic subjects. In the middle of 1828 a Cabinet Minister was defeated at a by-election in County Clare, and O'Connell was elected by the Catholic peasants. Had he wished it he could have used the Catholic Association as a fighting force in a civil and religious war. Wellington saw that he must yield. During the next six months George IV was persuaded to give way and to ask Parliament to take into consideration the laws imposing civil disabilities on his Roman Catholic subjects. Peel also, in spite of his Protestant utterances in the past, was persuaded to introduce the necessary Bills as Leader of the House. Almost the only notable Tory member

¹ *Hansard* (May 31, 1827). Wrongly indexed as Repeal Bill on Libels Act in *Commons Journals*.

of the House of Commons who did not follow Wellington was Sir Charles Wetherell, the Attorney-General. He refused to draw the Catholic Relief Bill and went so far as to attack it.¹ A new Attorney-General had to be found; but the Solicitor-General could not be promoted, as he was member for Cambridge, and one University by-election—Peel's—was as much as the ministry dared risk in the crisis. In the summer of 1829 Sir James Scarlett was therefore called in again.

Apart from his attitude to Catholic Emancipation he had previously shown three signs of Liberalism. The first was his opposition to the Act of 1819, which suggested banishment or transportation as a fitting punishment for seditious and blasphemous libel. The second was his attack on the Constitutional Association. The third was his defence of the *Vision of Judgement*. His opposition to the Banishment Bill was in no way exceptional; the Judges also had no reason to like the Bill, as they had shown by their neglect to use the powers it gave them. His attack on the Constitutional Association was due largely to his preference for Crown prosecutions and even for ex-officio informations. His defence of Byron's libel on the King's father in no way shook the King's great confidence in him. The points on which he differed from Wellington and George IV were as nothing compared with the similarity of Scarlett's authoritarian principles and those of the King and the Duke.²

The Duke and his ministry were exceedingly unpopular, and nowhere more so than among the ultra-Tories and ultra-Protestants of the back benches and of the newspaper Press. "Tormented with squibs and crackers and cruelly roasted by the Press,"³ Wellington resorted to the law of honour and the law of the land to restore his lost prestige. When a letter of Lord Winchilsea's was published accusing him of undermining the Church and Constitution, no considerations of State prevented him risking his life in a duel. When half-starved bill-stickers posted placards in the small hours of the morning, containing a last warning about the death-knell of the Protestant Constitution, and when a ruffianly street-seller tried to sell a dialogue between St. Paul's Cathedral

¹ *Annual Register*, pp. 53-56, 62.

² P. C. Scarlett, *Memoir of James, first Lord Abinger*, pp. 101, 116 sq.

³ Albany Fonblanque, *England under Seven Administrations*, ii. 48.

and the Monument, he had them taken into the custody of the police.¹

One of the boldest and most extravagant assailants of the Tory Government was the ultra-Tory *Morning Journal*, which we have previously noticed yielding an unreasoning support to the Constitutional Association, under the name then of the *New Times*, the nickname of the "Mock Times," and the editorship of "Hone's godchild, Doctor Slop." Its circulation had now fallen to a mere thousand a day, and with the decline of its circulation it had lost all the little sense of responsibility it had ever possessed.²

A most remarkable series of prosecutions was therefore launched against the proprietors and the editor and printer of the journal by the Whig Attorney-General on behalf of "a Tory ministry governing on Whig principles."

The first case arose out of an article which was alleged to mean that Lord Chancellor Lyndhurst had procured the office of Solicitor-General for a lawyer named Sugden in return for a loan of £30,000. Application was therefore made to the Court of King's Bench, at the instance of Lord Lyndhurst and through the agency of Sir James Scarlett, not as Attorney-General but as Lord Lyndhurst's private counsel, for leave to file an ordinary criminal information. Scarlett said afterwards that this criminal information "never was filed nor meant to be proceeded in; but the Court, by granting leave to file a criminal information, had declared its opinion that the case was a fit case for filing an ex-officio information."³

As soon as Scarlett had sought and obtained leave to file a criminal information for a defamatory libel on Lord Lyndhurst, the editor of the *Journal* put in an affidavit and denied that it was

¹ *Annual Register* (February 4, April 25, 1829), pp. 28 sq., 80.

² *New Times* circulation 846,000 (1821); 366,500 (1829).—*Annual Register* (1821), p. 351; *Accounts and Papers*, 1830 (549), xxv. 350.

³ "This was an admission of greater abuse of law and a more flagrant violation of justice than the most bitter enemies of Sir James Scarlett had imputed to him."—*Annual Register* (1830), 124 n. It was said that, when they had both been on the same circuit, Scarlett had often snubbed the unsuccessful Abbott, to whom he was senior, and that, now Abbott was on the Bench, Scarlett was the favourite counsel and ruled the Lord Chief Justice.—Scarlett's son-in-law and Abbott's friend, John Lord Campbell, *Lives of the Chief Justices*, iv. 359, citing Townsend, *Lives*, ii. 263. Also it was probably through Scarlett's influence that Abbott became Lord Tenterden. All that is certain is that Scarlett was a very successful advocate who stood well with the Court. His presumption was more blamable than the Judge's acquiescence.

the Lord Chancellor to whom he had been referring. Then, when Scarlett had elicited the defendant's line of defence and obtained virtual judicial approval for an administrative act, he dropped all threat of a private prosecution, and instead he filed an ex-officio information charging that the libel applied to some unspecified member of His Majesty's Government.

The second case arose from the filing of an ex-officio information for an alleged defamatory libel of the King and his Ministers. "We have the best reasons for stating that His Majesty has lately evinced something more than even marked coolness towards the Duke of Wellington," said the *Morning Journal*. The Duke had undermined the King's popularity. "But," it concluded, "His Majesty may yet have strength and intrepidity to burst his fetters, dismiss from his Throne the evil Councillors, and assume that station in public opinion which befits a public monarch."

The third ex-officio information was for an alleged libel defamatory of King, Ministers, and Parliament. "Dragoon-officers direct civil affairs. Troops are our law-givers," it said. "As for our revered Sovereign . . . we pity him. He is the worst-used man in his extensive dominions, and in his ripe old age is openly defied, derided, held in chains. . . ."

The fourth case arose from an indictment preferred by the Duke of Wellington on account of an open letter imputing to him "despicable cant and affected moderation," "grossest treachery to his country, or else the most arrant cowardice—or treachery, cowardice, and artifice united." A domestic chaplain to the Duke of Cumberland came forward and avowed himself the author of this; but he was passed over.

At the trial on the first charge—that of libelling some minister or other—the editor, the printer, and the proprietors were found Guilty. The editor defended himself; while F. Pollock and M. D. Hill argued in vain that one proprietor ought to be acquitted because he was lying ill and at a great distance from London when the libel was printed. On the second charge the jury compromised and protested, after retiring for three hours:

"We find the defendants Guilty of a libel on His Majesty, but not guilty of a libel on His Majesty's Ministers. We also beg to state it is our opinion that the article in question was written under feelings of very great excitement, occasioned by the unprecedented agitation of the time. We

therefore most earnestly beg leave to recommend all the defendants to the merciful consideration of the Court.

On the third information, and on the indictment, the defendants were formally convicted.¹

The castigation delivered by the jury did not end the matter. Judgement was pronounced on the very day Parliament met. Alexander, the editor, was imprisoned for a year, fined £300, and ordered to give security in £1,000. One of the proprietors, who protested that he had not seen the offensive letter before it was sent to the printers and that he was a clergyman with a living in Demerara, was sentenced to a fine of £100 and imprisonment till it was paid, while the other proprietors were let off on recognizances.² In the House of Commons Sir Charles Wetherell moved for copies of the proceedings in the three ex-officio informations; but Scarlett was learned enough in the precedents of prosecution to be able to show with but little difficulty that, except in his prior application to the Judges, he had been guilty of no innovations.³

Scarlett and Lyndhurst, Wellington and Peel, made a disastrously false move in instituting this series of prosecutions. So far from regaining their popularity they raised an outcry in the Press, no section of which knew whether it might not be next called on to defend its politics in a court of law.

The Duke of Wellington has performed one of the master-strokes of the strategic art—he has surprised his enemies, ay, and his friends too [wrote Albany Fonblanque in the *Examiner*]. With the paper-cutter of the law in his martial hand he has taken the field against the *Morning Journal*, and made a jury-box the key of his position in the world's esteem. The Court of King's Bench is his field of Waterloo, a rule of Court his truncheon, a proprietor of copyright his Napoleon; Law-officers are his soldiers, blatant lungs his loud artillery, costs his charges, and for hollow squares he has the vast hollowness of the Attorney-General.

¹ Trials, December 22, 23, 24, 1829. See newspapers for the following days; Moody and Malkin *Reports*, pp. 433 sqq.; *Annual Register* (1830 history, pp. 3 sqq.; *Law Magazine*, ii. 471 sqq.

² *Annual Register* (1830) chronicle, p. 21 sq.

³ *Hansard* (March 2, 1830). The Tory attacked the Whig for dishonouring Parliament by filing an information instead of moving Breach of Privilege, especially as Parliament would act irrespective of party, whereas an Attorney-General was bound to the interests of the Ministry alone. The Whig attacked the Tory for preferring a Privilege of Parliament by which the House made itself both accuser and judge, and judge, moreover, in its own cause.

The Conqueror, the Emancipator, the All-powerful Minister, the boasted Man of Iron, the Great Insensible, is—*heu gloria*—reduced to give battle to a newspaper. O Cervantes, thy Quixote is fast becoming a commonplace—windmills *are* giants to be encountered with lances, and wine-skins must be quelled with swords. . . . The nature of the folly is discordant with all that is known of the character of the Duke of Wellington. A disregard for opinion, amounting to contempt, has been accounted among his distinguishing peculiarities. He has been considered as a callosity, and now he is exposing himself as a sore. He was esteemed a cast-iron Statesman, and suddenly he proclaims: "Touch me not, I am potter's clay." This may be hypochondria, or it may be Scarlett, for surely it cannot be intended to countenance the measures of Prince Polignac, and to persecute the Press with a view to preserving conformity of councils. The coincidence is at least curious.¹

Polignac, the French Ambassador at London, had returned to France and formed the last reactionary and clerical ministry there in 1829. Seeing no hope of ever obtaining a majority in a representative Parliament, especially while the Liberal Press was free to oppose him, and hoping that the people at large, who had neither the right to elect deputies nor the ability to read the newspapers, would not concern themselves with the question, he decided to stretch the Constitution and suppress the Press and the pretence of Representative Government by Royal edict.

On Monday, the 26th of July, an ordinance was published prohibiting the publication of any newspaper without Royal licence.

¹ A. Fonblanque, *England under Seven Administrations*, ii. 26 sq. Similarly Charles Greville (Clerk to the Council and therefore a witness at the second trial): "How can such a man suffer by the attacks of such a paper, and by such attacks—the sublime of the ridiculous—that he is aiming at the Crown, but we shall take care that he does not succeed in this." The idea of the Duke of Wellington seeking to make himself King, and his ambition successfully resisted by the editor of a newspaper, flogs any scene in "The Rehearsal".—"He lowers his dignity by entering into conflict with such an infamous paper."—"An act of great folly."—"A great act of weakness and passion."—*Journal of the Reign of George IV* . . . (1888) i. 239, 242. Brougham likewise in a letter to Grey (January 10, 1830): "The libel prosecutions are of two kinds. Copley's were clearly right, and indeed necessary, though Scarlett, changing one of them into an ex-officio information, was quite wrong, and might have been fatal to the verdict, had the blockhead of a man not defended himself. The others . . . were very injudicious. . . . The man's folly and baseness gave them (I should say us, for I was of the prosecution and therefore ought not to be quoted) verdicts, where a good defence ought to have got acquittals, at least in the second. As for the Duke of Wellington prosecuting the mad parson's letter, it is inconceivable."—*Life and Times of Henry Lord Brougham*, written by himself, iii. 18. On the other hand, the Grenvilles approved of this "suppression" of the *Morning Journal*.—Duke of Buckingham, *Memoirs of the Court of George IV*, ii. 404.

That same day the leading Liberal journalists met at Thiers's editorial office and prepared a protest saying that they did not consider themselves bound by an illegal ordinance. Next day the protest was printed, and thousands of copies were flung out of the windows of the newspaper offices over the heads of the police, till the doors were forced and the presses broken. The people of Paris hoisted the tricolour, barricaded the city, forced the troops to leave it, and set up a revolutionary government. The Opposition deputies met at a banker's house; Thiers had the city placarded with the praise of Louis Philippe, the Duke of Orleans, and by Saturday, the 31st of July, Orleans was Regent of the Kingdom, and the Bourbon family were preparing to escape to Britain.

The Duke of Wellington was running no such risks as Prince Polignac. Sir James Scarlett even made some attempt to show that he, like everyone else, believed in the Freedom of the Press. He introduced a two-headed measure, in the hope of pleasing both Tories and Whigs, with the result that he satisfied no party. On the one hand he repealed the clause of the Libels Act of 1819 (60 Geo. III. c. 8) which permitted the imposition of banishment or transportation on anyone convicted of blasphemous or seditious libel for the second time. This repeal was no real concession, as the clause had been inoperative ever since it was passed, over ten years before. It was therefore rejected in Committee; but on the third reading more ministerial members were present, and Scarlett was thus able to restore his repeal clause. On the other hand, he increased the severity of the system of compulsory insurance against libels imposed by the Publications Act of 1819 (60 Geo. III. c. 9). The recognizances demanded of the publishers of stamped periodicals were increased from £300 to £400 in the London district, and from £200 to £300 in the country, and these sums were henceforward to be available for the payment of damages awarded in civil actions, as well as for fines incurred on convictions in criminal prosecutions.

These amendments to the Six Acts were of no great importance, and they were hailed with but little enthusiasm by the Radicals against whom the original measures had been directed.

Scarlett and his coadjutors take to themselves the credit of repealing a clause in an Act which they would never have ventured to carry into effect [wrote Francis Place]. For this there are no thanks due to them.

. . . They endeavour to persuade themselves that repealing a useless clause in a villainous Act of Parliament, and leaving all the other villainous clauses either untouched or made more villainous, will put them into good odour with "the respectable part of the community."¹ A ministry which did not deserve to be hanged would not need any such Acts.²

Scarlett and the Duke had done more to ruin than to retrieve the popularity of the Tory Cabinet, of the unreformed Constitution, and of partisan State-prosecutions for defamatory libel. Peel was no more liberal in his attitude to the Press. He would still have liked to see the Attorney-General prosecute tracts with such titles as *Armageddon, or the final overthrow of Antichrist*.³ By the autumn of 1830 he thought the general state of the Press at that time called for very serious consideration, and he had the attention of the Law-officers directed to it.⁴ But the Press was beyond the control of the Government, and on the 16th of November they resigned, after achieving nothing but increased unpopularity by their attacks upon the Press.

2. RURAL REPRESSION: WHIG PROSECUTES RADICAL, 1830-31.

The end of 1830 saw the fall of the Duke of Wellington's Tory Government. George IV had died in June; so long as he lived Wellington had been almost the only man acceptable to him as Prime Minister, whereas William IV was able and willing to call on others for their service. Huskisson had died in September, and with him went all chance of the Tory Ministry disfranchising the pocket boroughs and enfranchising the new towns. The change of King also made a new election necessary, at a time when the Ministry was ill-prepared to go before the electorate. The unpopularity it had sown by its half-hearted emancipation of Catholics and Dissenters it had only recently reaped in offending all parties equally by its ill-advised and ill-conducted attempt to prosecute

¹ Place to Hume (May 25, 1830), in Place's Political Correspondence in Brit. Mus. Add. MSS. 35148, f. 68. Also: "None but a most impudent administration, with a chuckle-headed gum-griber Attorney-General like Scarlett, would in times like these commit such follies as he indulges in."

² *Ibid.*, f. 61 (May 6th). Also: "Another step in the progress of despotism."—"These are not sedition times; they are therefore times to steal a march upon the people."

³ H. O., 49. 7, p. 390 (April 15, 1830), S. M. Phillips (Under-Secretary) to G. Maule (Treasury Solicitor).

⁴ H. O., 49. 7, p. 405 (October 19, 1830).

the Tory Protestant *Morning Journal* out of existence. It became weak at the very time the Radical Reform Movement was gaining greater strength than it had shown for ten years past. Distress at home and revolution abroad were again combining to provide circumstances favourable to the Radical Movement in Britain. But a new element now had to be reckoned with: working-class and Radical organization had proceeded apace since the failure of the monster meetings of 1816-19; trade unions and political unions were now for the first time becoming important forces in politics, and in the last resort they could threaten economic action instead of the assassin's pistol or the rebel's pike. This fact, as well as the suppression of penny and twopenny weeklies in 1820, shifted the main course of the movement from journalism to organization. Therefore the revived Reform Movement was of no direct importance in the history of criminal libel. One might, however, have expected some effect from the resignation of the Duke of Wellington after his declaration against Parliamentary Reform had made it unsafe for him to ride through the City to the Lord Mayor's banquet in November.

Earl Grey became Prime Minister, and Lord Melbourne, a liberal Tory, went to the Home Office. Brougham was made Lord Chancellor, and much might have been expected from his zeal for "the diffusion of useful knowledge" had it not already become evident that, useful as he might consider a knowledge of physics and dynamics, he had no use for political or historical information. Jeffrey, of the *Edinburgh Review*, became Lord Advocate, and Denman, who had been counsel for Queen Caroline and subsequently Common Serjeant at Old Bailey, became Attorney-General. Two years later Sir Thomas Denman was to become Lord Chief Justice in succession to Lord Tenterden (Sir Charles Abbott), and in that position he was to lay down the rule that a libel was still a libel even if published by Hansard under the authority of the House of Commons.

For the present he had other work to do. From the time of harvest there had been some sporadic outbreaks of rioting among the agricultural labourers of Kent, and some destruction of threshing-machines. In November 1830, the very month that Grey formed his Cabinet of landowners, the disturbances spread from Kent to Sussex, and were directed against paid overseers, tithe-

receivers, and wages of eighteenpence a day. These were followed by sporadic outbreaks against the same grievances in Hampshire, Wiltshire, and Buckinghamshire. As a Government, Ministers had to maintain order and protect life and property; but Melbourne, Denman, and their colleagues resorted to excesses which are as difficult to justify as those they sought to repress. Special Commissioners were sent into the disturbed counties, and nearly one thousand persons were imprisoned, transported, or hanged. As though this was not enough, prosecutions were begun and carried through against two of the most important of the Radical agitators because of their defence of the rights of agricultural labourers: while the Special Commissions were at work Carlile was tried at Old Bailey for articles he published before the Commissioners were appointed; when they had finished, Cobbett was tried before the King's Bench for an article he had written on their first appointment.¹ These prosecutions were destined to prove that the Whigs had practically nothing in common with the Radicals, and the outcome of them was to help demonstrate to the Whigs the danger of dropping the Reform Bill they introduced in March of 1831. Indirectly, by helping on the first instalment of Representative Government, and directly, by demonstrating once again how Press-prosecutions hit the prosecuting Government like a boomerang, these two prosecutions were important as bringing the prosecuting system a step nearer its end.

Denman did not file informations ex officio for libel: he submitted bills of indictment to grand juries in the normal way, hoping that Press-prosecutions would find less disfavour if they impinged on the Freedom of the Press without suggesting any disregard for trial by jury. But in another respect Denman showed himself more unscrupulous than most Attorney-Generals. In selecting passages to cite in indictments he would arbitrarily cut off the beginnings and ends of paragraphs and even of sentences besides suppressing their context, always heightening their effect and sometimes changing their meaning.

¹ "Indignant at the thought that these writers should escape while the ignorant peasantry suffered, the Attorney-General was induced to file ex-officio informations against Carlile and Cobbett."—Sir Joseph Arnould, *Memoir of Thomas, first Lord Denman* (1883), i. 331. This statement is so inaccurate that the reason it gives for the prosecutions cannot be accepted without considerable doubt. We do not know who it was that wished for the prosecutions; but I suspect that it was King William. Cf. Arnould, *op. cit.*, 335, 365 sqq.

In November 1830, when Wellington's fall was hoped for, though his *felo de se* was hardly dreamed of, Richard Carlile decided that the nation needed a weekly *Prompter*, and he thereupon published one.¹ In the third number, published on the 27th of November, he gave a list of the new Ministers, including among them the Master of the Horse to the King and the Master of the King's Buckhounds, and remarking that this showed how ridiculous the mummeries of Constitutional Monarchy were, and how much preferable a business-like Government would be. The indictment for this article omitted all reference to the Household Officers and the argument for public officers who were men of business, and was confined to the attack on Constitutional Monarchy, whatever that ambiguous phrase might mean. A second paragraph, "to the insurgent agricultural labourers," congratulated them on claiming their rights, "for as yet there is no evidence before the public that you are incendiaries, or even political rebels," and in a passage omitted in the indictment it called on them to persevere in their just and moderate demands; but the *Prompter* went on to argue an extremest case, which was undoubtedly intended to be hypothetical, but which was so confusedly stated as to cause a great risk of its being misunderstood: if they *were* proved to be incendiaries he would argue that theirs was a state of war, that in warfare all destruction of property was justified, and that any attempt to stifle their just and moderate demands by severity would be so wicked as to justify their resistance even to death, and to life for life. The third charge came from an account of a working-class Reform Meeting addressed by Carlile at the Blackfriars-road Rotunda. It was an ill-balanced and obscurely worded discussion of whether the people would gain by "taking the business into their own hands"; "alluding to Earl Grey's threatened severity, he trusted that, if an effort were made to put down the just discontent of those starving labourers by any other means than that of redressing their grievances, they might be able to rise in their congregated strength and put down the Earl."

¹ Pp. 16, 3d. It was unstamped though less than 2½ sheets in size, though published more often than once a month, and though containing news and comment. It was therefore illegal. It paid special attention to public meetings at the Rotunda—a hall which had previously been used as museum, literary institute, and equestrian arena, which lay behind the third house on the south-west side of Blackfriars Bridge.

In two out of the three cases Carlile was undoubtedly preaching the right of rebellion under certain circumstances—a right which nearly every political thinker proclaimed until the growing complexity of civilized life in the nineteenth century made its usefulness very doubtful indeed. The Whigs also believed in the rightness of revolt in certain circumstances. Where they differed from Carlile was in the belief that in the case of labourers it was equally wrong in all circumstances, and that any discussion of it in connection with a practical issue deserved to be punished if it was addressed to men below their own rank.

The indictment consisted of four counts in which the passages objected to were arranged in various ways. The first count contained all three passages and the fourth contained only the passage referring to Constitutional Monarchy, while the second and third referred only to the insurgent labourers. The first count charged that Carlile's intention was to incite subjects in general to hatred of the Constitution and to acts of violence; the second and succeeding counts limited the charge to intending to incite the agricultural labourers in particular to hatred of the Constitution, to acts of violence, and to resistance even to death. It was a remarkable indictment, not only from the great variety it offered, but also because it did not mention the publication from which the passages were taken, and still more because it began by stating that at the time of publication it was publicly rumoured, reported, and believed that the agricultural labourers in England had been and were guilty of insurrection among other crimes. Even the Chief Magistrate at Bow Street did not remember hearing the word "insurrection" used for the riots.

Francis Place's week-end endeavours to persuade the Whig Ministry not to risk losing the little popularity they had were quite fruitless, and on Monday January 10, 1831, Carlile, glad that nothing had come of Place's kind offices, was tried at Old Bailey before Newman Knowlys, the hated Recorder of the City of London.¹ At the very outset Carlile wanted to contest the

¹ Long report in *State Trials* (N.S.), ii. 459-593, following Gurney's shorthand notes. Carlile's report in the *Prompter* is very meagre and of little use. Francis Place to Colonel Leslie Grove Jones (January 7, 1831) in Place's Political Correspondence in Brit. Mus. Add. MSS. 35149, ff. 12-17: all the arguments against prosecution and an excellent description of Carlile as a fanatic. Carlile to Place (*ibid.*): "I shall not thank you if you put a stop to my trial on Monday. Do what you can for me after."

legality of the indictment, and to complain that the mode of publishing was not specified, and "Little Jeff," the Recorder, lost his temper even before the trial began. The counsel for the prosecution said that during the last few months their country, which was celebrated for the manner in which property was revered, had become a prey to a set of misguided and wicked individuals who were endeavouring to extort some terms or other from those in authority by reducing them to distress by means of the destruction of property throughout the Kingdom. The witnesses for the prosecution included two Justices of the Peace, one from Hampshire and one from Sussex, and both gave evidence that they had never seen Carlile's *Prompter* till the day of the trial, although they had been in the thick of the disturbances.

Carlile's reply took over five and a half hours to deliver. Though never a good speaker, he now spoke much better than eleven years before, thanks to his experience during the last five years, especially at the Rotunda. He began by getting back to general principles.

The high ground on which I proceed is—and I put it upon its whole strength—that it is not fair for any man or any set of men to set themselves up in judgement as to what shall or shall not be the amount of the Liberty of the Press.

Many things had been considered law that were not law: Hampden's resistance to Ship Money, and Wilkes's resistance to General Warrants, had turned out to have been resistance to illegality. He himself had been imprisoned for selling two books; yet part of his sentence had been remitted, and he had ever since been permitted to sell them openly.

Now, that is a fact to prove that what are called proceedings under the Law of Libel must be in general, in relation to those public matters, acts of tyranny, and that they are morally and properly resisted by any individual who shall place himself under that hazard of resisting them.

The Recorder said that he would not allow the defendant to argue that the judgements of the Judges in the highest Criminal Court were acts of tyranny. Carlile retorted that morally, if not legally, libel-prosecutions were tyrannical acts on the part of the prosecutors, if not of the Judges.

The first passage charged as libellous reflected on the Constitu-

tional Monarchy. This, Carlile explained, meant that "the real state of the Government is, or should be, that which France now presents to the world, a King surrounded by republican institutions—that is, a King surrounded by a Legislature emanating from the people themselves." He had not libelled William IV, and could not do so, as he knew nothing about his character which he did not respect. As the passage stood in the indictment it was quite abstract and did not refer to the British monarchy at all. It had to be restored to its context before it could be made to refer to the British Constitution, and then it referred to the Royal Household, but in a less offensive way than *The Times* did when, in a widely circulated editorial, it called the Household "a nest of voracious vermin," "a set of lords by way of menial servants," and "domestics of a limited monarch at so many thousands each per annum for wearing out their lives in irksome yawning attendance on a King who feels oppressed by their contiguity to his person." Then Carlile showed how ridiculous the Household still was. The Recorder interposed to prevent that subject being pursued; but the counsel for the Crown expressly declared that, for himself, he would make no objection to the general discussion.

Carlile passed on to his address to the labourers and the notice of his speech at the Rotunda. The *Prompter* had not been issued until after the agricultural disturbance had begun, and its small circulation was confined to London and the manufacturing districts.¹ When the article was written it was not known for certain that any acts of the labourers were criminal.² Lord Chancellor Brougham had once written in favour of allowing or inducing the people to take part in the discussion of political economy. Carlile had discussed whether it was the duty of any man to starve in the midst of abundance, and so had Cobbett. The Recorder would not allow newspapers to be read as evidence that the rumours current did not go so far as to mention insurrection; nevertheless, Carlile read them, and he also read passages from Blackstone admitting the justice of resistance in some

¹ One thousand were printed, 600 for sale over the counter and 400 for wholesale distribution as follows: Manchester 100, Lancashire towns 50, Yorkshire towns 50, Scottish towns 25, Nottingham 25, Metropolitan vendors 150.—*State Trials*, ii. 610.

² The Duke of Wellington's speech was cited (November 29, 1830).—*Hansard*, 530.

circumstances. Then he read more passages from newspapers showing that the labourers were unjustly treated. The Recorder declared that the legality of the treatment accorded to the labourers was nothing to do with the jury. Carlile replied that the very question before them was whether a man had a right to justify the resistance made by the labourers when they were thus treated.

He therefore hoped that his jury, taking into consideration the great principle *summa ratio summa lex* and the other great principle *salus populi suprema est lex*, would see that he had not offended any law, but that the whole of his crime was sympathy for suffering humanity.

I feel I stand before you a perfectly innocent individual and a good man—as a good citizen, as a man of humane feeling. I have done nothing but that which a reasonable and good man would do, and ought to do, and would deserve punishment if he had not done, in my station in life.

The jury were to consider

whether the justice of the country does not require that prosecutions of this kind . . . should be discouraged, and that laws, if intended for punishment, should also be intended for protection, and that, if there has been an absence of laws for protection with regard to one part of the people, you cannot justify putting the laws in force on the other side, even supposing illegalities committed.

Carlile ended his speech amid the clapping of hands. The Attorney-General's special privilege of replying to the defendant's speech was claimed and exercised by the Crown counsel. Judge and jury then withdrew for some refreshment, and after dinner the Recorder summed up in a speech of over an hour. At nine in the evening the jury retired. At eleven o'clock the Recorder returned into Court and called the jury; they were agreed that Carlile was guilty of publishing, but the Recorder refused to accept that verdict, as they were not agreed whether what he published was a libel or not. So they retired, till at midnight the Recorder returned and called them into Court a second time; they were still no nearer to agreement: the foreman and one other complained that they felt unwell; but amid outcries from the gallery the Recorder refused to let them have any refreshment, or anything comfortable to sit or lie down on or to help keep them warm; so they retired again. At one o'clock, in the small hours

of a January morning, when they had been locked together without food, fire, or drink, for four hours, they were called into Court for the third and last time. If they had retired again, it would have been to a further eight hours' imprisonment in an ill-furnished and unwarmed room. While they were debating together in the Court the counsel for the prosecution said that it was by no means the wish of the Crown to proceed with harshness towards Carlile, and he might go home if a householder was present to offer bail in £200. This had its effect on jurymen, who had been in Court sixteen hours or more: they expected the sentence would be as light as the bail just mentioned.¹ So before Carlile had gone they compromised and found him Guilty on the second and third counts—that is to say, on those referring to the right of resistance, but not on those touching the constitutional monarchy. Next day Carlile was sentenced to two years' imprisonment, a fine of £200, security in £1,000 for good behaviour for ten years, and imprisonment till the fine should be paid and the security given.² The fine was never paid, the security never given, and after eight extra months in prison he was let out unconditionally.³

Cobbett's case did not differ much from Carlile's, except in its happier issue: Carlile suffered the martyrdom and Cobbett gained the crown. On Saturday, December 11, 1830, a letter to "countrymen and friends" was published in *Cobbett's Weekly*

¹ Letter signed "A friend in the cause of humanity (and one of the jury)," in *Prompter*, p. 174 sq.

² "I like the whole case as it stands, and think it even better than an acquittal would have been on Monday."—Carlile to John Evans, solicitor, January 12, 1831, in Place's Political Correspondence in Add. MSS. 35149, f. 20.

³ Carpenter devoted one of his illegal unstamped *Political Letters* to Carlile's prosecution (*Prompter*, pp. 166 sqq.). *The Times* said: "The truth is, with respect to offences of the Press generally, that if men expect to live free from mischievous excitement wherever printing is known and exercised as an art, they expect that which cannot take place" (*ibid.*, 222; H. Jephson, *The Platform*, ii. 577). *The Spectator* said: "Security for ten years is monstrous," and "If the country gentlemen were not practically as ignorant as their labourers, they would see that the schoolmaster was the only person that can effectually put down the *Prompter*. An uneducated populace could hardly be unduly influenced by any writer; but an educated populace would assuredly not be influenced by such a writer as Carlile."—(*Prompter*, 199). Cobbett wrote hoping that Carlile would not be quite killed by the Government's "liberality," and saying that the real blasphemers were not such as Carlile, but rather the Jews whom ministers supported (*ibid.*). The threepenny *Prompter* lasted just one year (November 1830–November 1831); by then it was probably eclipsed by other unstamped papers, which had the advantage of being edited by Radicals who were still at

Political Register under the heading of "Rural War." In it he said he hoped the Special Commission just appointed would not be so inhuman as to *shed blood*, as "the hell-hounds of loan-jobbers," and Jews, and "the bloody *old Times*," their organ, wished to see them do. Some parson justices were as bad; there was a Suffolk pluralist selling a penny pamphlet "the object of which is to wheedle the labourers of his parish and neighbourhood to be content to *eat potatoes* while he greases his rosy gills with roast beef and turkeys." Their tithes ought to be restored to the public. He would write on that subject in the January *Twopenny Trash*. Meanwhile he would point out that the parsons were reducing their tithes as a result of the labourers' insurrections: "'Out of evil comes good.' We are not, indeed, upon that mere maxim 'To do evil that good may come from it.' But . . . it is unquestionable that their acts have produced good, and great good too." All that preceded the "but" was omitted in the indictment; all that was there inserted was the detailing of the good produced: the labourers would never have had a chance of eating the food they destroyed because of the tax-gatherer and tithe-receiver, and the terror of the fires had made the parsons reduce their tithes.

The prosecution began with a complaint in Parliament by a member for a Kent borough on December 16th. He asked whether an article published in that diabolical paper, the *Register*, by a person named Cobbett, had come under the Attorney-General's notice.¹ A week later, when Parliament was to be adjourned for seven weeks, he repeated the question: the Leader of the House was then present, and he objected to Parliament dictating to the Government; so the motion was withdrawn.² During the recess there were two important developments. One was that the Government acted so as not to be driven by Parliament: on February 18, 1831, after Carlile had been sent to prison, Cobbett was indicted by a grand jury at Old Bailey. The other important events came from the repression of the Sussex labourers. About Christmas-time a huntsman curate visited a young man who had been sentenced to death for malicious rick-burning, and then

¹ *Hansard* (N.S.), i. 1213. Complaint by Arthur Hill Trevor, M.P. for New Romney, later Lord Duncannon.

² *Ibid.*, ii. 71 sqq. (December 23, 1830).

reported that this man confessed he had been misled by Cobbett's lectures.¹ On reading this in the newspapers three Justices of the Peace visited him, and then produced a badly spelt and worse punctuated confession which they said was written by the dying man.² On the strength of this the condemned man's death sentence was commuted. Cobbett and those who had actually heard him lecture considered the confession a mere fabrication; but to say so would have been to endanger the young man's neck; so Cobbett was reputed to be the instigator of the rick-burning. Cobbett's trial was fixed at first for June; but it was countermanded. Old Jeremy Bentham, though he detested Cobbett's character, wrote to "an influential member of the Whig Government," and there must have been some in authority who shared his apprehension lest the Ministry should be lowered in the estimation of the people as the result of a prosecution for a political libel, any bad advice in which might be "more effectually counteracted by good counter-advice, backed by reasons also in print."³

But the Whigs were not averse to prosecution, and the King, feeling himself responsible for the maintenance of order, seems to have insisted on the trial.⁴ In the House of Lords, Lord Plunket formally complained about libels on Members of Parliament.⁵ Another Member said that there could be no peace in the country till such men as Cobbett and Taylor ("the devil's chaplain," who preached Deism in full canonicals) were put down.⁶ So Cobbett was brought up for trial on July 7, 1831.⁷

The trial lasted from half-past nine in the morning till after six in the evening. The Court of King's Bench was crowded, and as Cobbett entered there was much clapping and cheering: "Be patient, gentlemen," he said, "for if truth prevails we shall beat them." Denman opened the case for the prosecution, and said that Cobbett's article tended to influence the minds of the working people of England and incite them to acts of violence. Cobbett interrupted him to point out the very clear distinction in his mind

¹ *Cobbett's Weekly Political Register* (January 1, 1831).

² *Ibid.* (January 8, February 19, 1831).

³ Bentham, *Works*, xi. 68 (June 22, 1831).

⁴ *Cobbett's Weekly Political Register* (July 16, 1831) cited, G. D. H. Cole, *William Cobbett*, p. 368.

⁵ *Hansard*, ii. 284 (June 24th.).

⁶ *Ibid.*, 705 (July 4th.).

⁷ Full account in *State Trials* (N.S.), ii., 789-904, following Gurney's shorthand notes and *A Full and Accurate Report of Mr. Cobbett's Trial* (publ. W. Strange, 5th ed. 1832). The shorthand is not always correctly transcribed.

between the intention charged in the indictment and the tendency imputed by the Attorney-General, claiming a little indulgence for himself as the indictment styled him a labourer. He defended himself in a masterly speech of well over four hours. It was a day of joy to him. During the last few years he had become an excellent speaker, and now he used the opportunity to wipe away the Whig calumnies of himself. By his previous "trials" in Parliament and in Sussex "they have tried to make the whole country a jury, and to obtain from them a previous decision against me, before they came here." He spoke strongly on the partiality that was called the Liberty of the Press:

If the Attorney-General were impartial; if he were to call everything scandalous, false, malicious, seditious; if he were to rake together all the Billingsgate of the Bar and pour it upon every publication that was exceptionable, every publication that would bear a construction of that sort—then I should not complain. Then we might all go into gaol together. The gaols might be enlarged, and the Whig Government might have the gaols full of us. But the Attorney-General is extremely select in what he does. . . .

This led him to attack the Whigs:

Oh, they never proceed by information ex officio! They have a monstrous regard for the Liberty of the Press. . . . They have actually commenced in seven months, and carried on, and that with the utmost rigour, more prosecutions for libel than in the seven years previous to the time they came into power had been carried on by those haughty and insolent Tories.

So long as a newspaper puffed the Whig Ministry as though it was a box of pills, it might make free with Parliament itself. It had been objected in Parliament that *The Times* had called members of the House of Commons "hired lackeys of public delinquents"; but the previous question had been moved, "and *The Times* newspaper pranced away quite free from the shackles they wish to put upon me." Similarly with regard to the Judges: the Lord Chancellor's younger brother, himself a Master in Chancery, had publicly declared that Judges were working behind the scenes to defeat the measures of Ministers, and the *Courier*, the faithful organ of every Ministry, had recently said:

There is a total disregard of decency on the part of the Judges, so that such men are not fit to preside on trials of a political nature. What chance

has a defendant, if he be a Reformer—what chance is he to have before one of these Judges?

Similarly, too, a libel on a poor man had been passed by unnoticed: no one had been prosecuted for lying about a poor Hampshire labourer who had just been executed for hitting a man who had five relatives in Parliament. The late King had been likened to Nero by Denman himself. Then an attempt had been made to bias the people against the present defendant. It had been rumoured that he had run away on hearing of the Sussex labourer's supposed confession; but by threats of actions for slander he had traced the story down through a parson to a noble earl on the bench who had heard it at his club. He produced a declaration signed by one hundred persons who had heard him lecture at Battle in Sussex, proving that that confession was false; the man whose property had been destroyed was among the signatories. Still worse, he held in his hand a letter from the same labourer, and this, unlike the pretended confession, was well spelt and punctuated. From this attack on the policy of partiality in prosecution—a policy which was not really the peculiar disgrace of any one party—Cobbett turned to a defence of himself against the charges made in the indictment, not forgetting that it was an indictment. "Sir James Scarlett's proceeding was manly, it was upright," he said, whereas Denman, like a Pharisee, prided himself on filing no more ex-officio informations, and instead chose only one part of one paragraph on which to draw up his bill of indictment. Denman had omitted the proverb, "Out of evil comes good," though that meant nothing worse than that good did come of the Whig Revolution, revolution though it was, and that salvation had come from the Lord's Crucifixion, wrong as it was on the part of the Jews. Cobbett read the missing paragraphs and also a petition from himself that had been presented to Parliament and then inserted in that same number, blaming the tax-gatherer, and not the farmers, for the rural distress. The shilling weekly *Register* was too dear for agricultural labourers; for them Cobbett had provided the monthly *Twopenny Trash*—a title reminiscent of the litter of cheap weeklies published twelve years before—and from it—its first number (November 1, 1830)—he read an appeal to Englishmen of all classes to unite as against the French. "Let every true Englishman, as a free man, think it his duty to

bring the wretched incendiaries to justice," was the advice he had actually given working men.

Cobbett's greatest success came from the witnesses he called. A large part of the Cabinet had been subpoenaed and was in attendance, though Cobbett was not allowed to question them about the exercise of the prerogative of mercy in the case of the "confession." Lord Chancellor Brougham was called, and it was proved that he had asked young Cobbett for permission to reprint his father's letter to the Luddites for diffusion by the Useful Knowledge Society, thus recognizing that, so far from advocating the destruction of threshing-machines, Cobbett explained the advantages of machinery provided the workers' rights were recognized. Lord Radnor was also called, and he gave evidence that he had visited the Lord Chancellor only a few days after November 11th, and had then pointed out the alleged libel and explained what he conceived its meaning to be, mentioning at the same time the article of 1816, about which the Lord Chancellor had thereupon written to Cobbett's son.

At ten minutes past six the jury retired. All that summer night they remained together, and were still far from agreement when the Lord Chief Justice returned at nine o'clock next morning. The jury was therefore discharged, and the Attorney-General entered a *nolle prosequi*.

Some blamed the Lord Chief Justice for giving rope to Cobbett, for Lord Tenterden was certainly less indecently rash than Knowlys, the City Recorder.¹ Others might well have praised Cobbett for his sound judgement in acting according to the sensible advice tendered him by Francis Place twenty years before, and then rejected: it was probably Lord Brougham's evidence that turned the scale in his favour. Perhaps the heavy sentence imposed on Carlile made some jurymen fear an equally unwise and inhuman sentence on Cobbett.² The summer weather that enabled jurymen

¹ "The Chief Justice was very timid, and favoured and complimented him throughout; very unlike what Ellenborough would have done. . . . Denman told me that he expected they would have acquitted him without leaving the box, and this principally on account of Brougham's evidence. . . . This made a great impression, and the Attorney-General never knew one word of the letter till he heard it in evidence, the Chancellor having flourished it off, as is his custom, and then quite forgotten it."—C. Greville, *Journal of the Reign of George IV, William IV* . . . ii. 162.

² Place to H. Warburton, M.P. (February 22, 1832), in Brit. Mus. Add. MSS. 35149, f. 22.

to hold out all night must not be forgotten. The fact that Special Jurymen did so hold out showed how far the March of Mind had brought them and the class to which they belonged since the terror of 1819, when they had made themselves the instruments of persecuting orthodoxy in religion and politics.

But, whatever the cause of the failure of the prosecution, its effect was almost unmistakable. The King might wish for ex-officio prosecutions for defamatory libels on the Crown, and, in the days of May 1832, Lord Melbourne might think even of criminal informations.¹ But the Attorney-General would not think them expedient. "This was the last time that Denman as Attorney-General appeared as a public prosecutor ex officio for libel," said his biographer; and he himself declared in Parliament next year: "It was his firm opinion, founded on experience, that a political libeller thirsted for nothing more than the valuable advertisement of a public trial in a Court of Justice. Triumph there made him rich; and defeat gave him all the honours of martyrdom."²

Althorp, the Leader of the House of Commons, and among Whigs one of the most popular members of the Cabinet, saw what a great triumph Cobbett had gained; "but," he added, almost in Cobbett's own words, "it is an ill wind that blows nobody good, and we can't now be attacked for not prosecuting him."³ The difficulty of obtaining a conviction for political libel was a conclusive argument against those who would otherwise have accepted the expediency of Press-prosecutions as self-evident.

3. THE OUTCOME, 1832-43.

In 1832 the first great Reform Bill became law, and its enactment set limits to a belief in a static unchanging Constitution. For the future, what might be changed might be freely criticized. The Tories had seen the power of opinion, and they had argued that, if no change was to be made either by reform or by revolution,

¹ H.O., 49. 7, p. 457 sq. (May 24, 1832), S. M. Phillips (under-secretary) to the Attorney- and Solicitor-General direct; ex-officio informations were not specified.

² Arnould, *op. cit.*, i. 335; *Hansard* (3rd Ser.), xii. 1151 (May 21, 1832).

³ *Memoir* by Sir Denis le Marchant (1876), p. 328.

no libels on the Constitution must be circulated. They had seen that, if political libels were circulated, public feeling would have to be satisfied somehow. In defiance of the law, or with the connivance of the Ministers, libels had been circulated, and were being circulated, and now the rising tide of feeling had engulfed or driven back the defenders of the "matchless Constitution."

The Reform Movement and the Struggle for the Freedom of the Press were two aspects of a single movement to secure the development of the Constitution in accordance with the desires of the people; and the success of the former movement, incomplete as it was, brought with it some degree of success for the latter. It did at least mean the recognition of the idea that the Government should be the servant of the people.

Already a slightly different question was presenting itself for solution: Were equal opportunities for political activity and political information to be provided for all men regardless of the class to which they belonged? The working-class Radical Reform Movement had already taken the first steps towards the Chartist Agitation. The Struggle for the Freedom of the Press had likewise taken a new turn by 1830, when the great Battle of the Unstamped began; and in the new struggle for the abolition of the Press-taxes, the old struggle against the Law of Criminal Libel was almost forgotten. Its legislative achievement was meagre, in spite of the reform of the House of Commons, and its story is soon told.

The continuance of the agitation was due primarily no longer to an Englishman, but to Daniel O'Connell, who in 1833 found himself confronted, as politician, as barrister, and as Roman Catholic, with almost every aspect of the Press-problem.

His speeches in Parliament were being badly "burked" by the reporters, and his exertions on the anti-slavery side concealed; so he attacked the Newspaper Press in Parliament, his motion was seconded by a Member who had formerly reported for *The Times*, and he got an order upon the printer and a proprietor of *The Times* to attend at the bar of the House. In revenge the newspaper reporters went on strike: they signed a declaration that they would never again report O'Connell's speeches till he apologized. "If *The Times* does not report me, it shall not report anybody else—that is flat," wrote O'Connell; and for the next

ten days he "spied strangers" in the House, and left the Speaker no option but to have the gallery cleared and the reporters shut out.¹

We are here more concerned with the less dramatic conflict with Solicitor-General Sir John Campbell (1779-1861), into which O'Connell embarked, when three men connected with his London evening paper, the *True Sun*, had ex-officio informations filed against them for advising the people not to pay taxes.² It was then that the future of the English Libel-law first came to rest with these two men, the one desiring a radical reform of the law so as to prevent political prosecutions, and the other, as befitted a son-in-law of Sir James Scarlett, desiring a moderate conservative reform which would leave the powers of the Government untouched.

In letters first to his *True Sun*, and later to the *Dublin Pilot*, in April 1833 he had denounced the Irish Coercion Act that had just been passed, as more worthy of an Algerian despot than of British Whigs, and with it he had denounced the Union of Ireland and Britain. The London paper went scot-free, while Robert Barrett, the proprietor of the *Dublin Pilot*, was prosecuted for seditious libel, and O'Connell also would probably have shared the same fate if he had not succeeded in persuading Barrett not to give up the original manuscript.³ After a long delay Barrett was tried at Dublin before a special jury packed with Protestants just five weeks before the Act to reform Irish juries came into force, and he was naturally convicted, although O'Connell seized the opportunity for a great forensic oration that was far more seditious and more widely reprinted than the original letter.⁴ On the understanding, "I pay all, you take the personal suffering," Barrett had six months in Kilmainham Gaol, O'Connell paying all his expenses and his fine of £100.⁵ But that was not all: Barrett was forced to give up the *Pilot* because the Irish Stamp Act, unlike the corresponding British measure, enabled the authorities to cut off a convicted proprietor's supply of newspaper-stamps.⁶

¹ D. O'Connell, *Correspondence*, i. 376 sqq.

² J. B. Atlay, *Victorian Chancellors*, ii. 154.

³ O'Connell, *op. cit.*, 357 sqq. On Barrett's simplicity, see *ibid.*, 499 sqq.

⁴ *Hansard*, xxi. 635 (Sheil, February 21, 1834); O'Connell, *op. cit.*, 399; trial November 26-27, 1833.

⁵ O'Connell, *op. cit.* 414, 450.

⁶ *Ibid.*, 399 sq., 408; *The Times*, January 21, 1834.

O'Connell, therefore, immediately introduced a "Bill to secure the Liberty of the Press," saying in Benthamite language that "he was anxious to give increased power to the tribunal of public opinion," and proposing, among other changes, to allow the truth to be pleaded and proved in criminal libel-prosecutions.¹

Another case that came into prominence at that moment ensured him the support of the English Radicals. A paragraph had been published in the *Brighton Guardian* saying that rick-burning had been most rare in districts where magistrates had paid most attention to the needs of the lower classes, and most common where magistrates had been most severe. Some of the Sussex justices who were thus referred to had Levy Emanuel Cohen, the editor who inserted this indiscreet paragraph, prosecuted for incitement to coerce the magistracy by incendiarism. A grand jury, twenty-three out of twenty-four of whom were magistrates, endorsed the bill of indictment. Cohen was found Guilty at the Sussex Assizes, although he had offered to give up the name of the writer; and in November 1833 he was sentenced to six months' imprisonment in an Essex prison and a fine of £50, although not a single case of incendiarism had occurred in Sussex ever since the publication of the article in the previous March.²

The Government had to do something: on the one hand, they refused to release Cohen on the motion of the Irish and the Radicals, while, on the other hand, they did not oppose the first reading of O'Connell's bill; but they also launched out on a middle course of their own, by obtaining the appointment of a Select Committee "to consider the present state of the Law as regards Libel and Slander."³ It is doubtful whether the Committee was more than a procrastinatory expedient rendered doubly necessary by the disintegration of the Cabinet; and, as though the terms of reference were not already wide enough, the Committee was soon afterwards instructed to inquire and report how far, in their opinion, the Publications Act, under which political weeklies were

¹ *Hansard*, xxi. 468, sqq. (February 18, 1834); *Bills*, 1834 (48), iii. 449.

² *Morning Chronicle*, November 28, 1833; *Hansard*, xxi. 635 sqq. (February 21, 1834) and 1115 sqq. (March 4th).

³ *Ibid.*, xxii. 410 sqq. (March 18, 1834). It consisted of 28 M.P.s, including Peel, Scarlett, Roebuck, Hill, O'Connell, and Solicitor-General Pepys. Attorney-General Campbell, who had probably suggested the Committee, was added after his by-election.—*Commons Journals*, lxxxix. 135.

liable to the newspaper-stamp, ought to be modified or repealed.¹ Because of the enormity of the task, or because of the fall of the Whig Cabinet in 1834, no report was ever presented, and O'Connell could do nothing but bring in an annual "Bill to secure the Liberty of the Press."²

The appointment of this abortive Committee, however, was not quite without results. For the first time the defects of the Libel-law had been stated from the Treasury Bench by a Solicitor-General; and in the evidence given by Lord Chancellor Brougham, and later privately printed and widely distributed by Francis Place, we can see how far a man who was at once a liberal-minded lawyer, a responsible politician, and a friend to popular education was willing to go.³ He unhesitatingly declared his belief that public libels—libels abusing the institutions of the country—did very little harm, and that discussion, however intemperate, was not to be feared.⁴ Unlike Attorney-General Campbell, he also thought that it was unnecessary—when it was not useless—to institute prosecutions for incitement to general resistance to government, and for advising the formation of associations to resist the payment of taxes; although he thought that, in principle at least, the actual formation of such associations would be a fit subject for prosecution.⁵ Under most circumstances the only public libels that might be justifiably prosecuted were those that were not merely libels, but were also misdemeanours, in that they procured the commission of some definite crime or breach of the peace, such as murder or arson.⁶ But in the opinion of Brougham, as in that of most subsequent statesmen, this wise moderation was to be restricted to policy and was not to be embodied in law:

Has your lordship ever considered the matter so as to shape a law that should draw the distinction between libels dangerous to the public

¹ *Commons Journals*, lxxxix. 348 (June 4th).

² *Ibid.*, xc. 139 (1835); xci. 26 (1836); xcii. 46, 326 (1837); xciii. 255 (1838); xciv. 67 (1839).

³ Wallas, *Place*, p. 337 n. Not in British Museum Reading Room, nor included in R. Thomas, *Bibliographical List of Brougham's publications*. But Brougham himself submitted a copy to the Campbell Committee, who reprinted it in the Appendix to their *Report*, 1843 (513), v. 269 sqq., which also contains evidence submitted by the president of the French Chamber of Deputies.

⁴ Qq. 49, 50, 53.

⁵ Qq. 53, 55.

⁶ Q. 51, taking "crime" and "breach of the peace" in their common narrow sense.

or hurtful to individuals, and those that are harmless?—That I have always found to be perfectly impossible. I think the Attorney-General having the prudence not to prosecute those whom it would be indiscreet to prosecute, is the best thing that can be devised.¹

Similarly with the Law of Blasphemous Libel, although “the experiment of forbearance” had been successful in respect of Carlile:

I am of opinion the Law is totally useless: it does not prevent a single person from blaspheming. I believe that a man who has this disposition is not a rational being—not a man to be reasoned with—and that no fear of punishment will prevent him from indulging his senseless propensity.

Nevertheless:

I really think it would be a difficult thing to alter the Law upon this head, because the feelings of the public in the respectable classes are so strong upon it that, if you were to repeal the Law of Blasphemy, they would all say you were encouraging the offence. . . .²

So the Whig Ministers of the age of the great reforms were to hand on the Law of Seditious and Blasphemous Libel to future generations, and with it perpetuate the all-important difference between those who thought with Brougham that the Law-officers would do best to turn a blind eye to sedition and blasphemy, and those who thought with Campbell who actually used his powers of prosecution both as Solicitor-General during the Irish agitation of 1833 and as Attorney-General during the Chartist agitation of 1839.

Yet there was one department of the Law of Criminal Libel in which an agreed measure of non-partisan reform was possible, and it was through Campbell's efforts that a slight relaxation was here introduced. In 1843—the year that Carlile and Hone died—this lawyer with a taste for high society and an ear for scandal obtained a Select Committee of the House of Lords to inquire into the Law of Defamation and Libel; but he took care to limit its inquiries to the comparatively simple question of defamatory libel. In moving for the Committee he said that on the whole subject of libel “the law of England is more defective than that of any other civilized country in the world”;³ but what he had specially in view was the possibility of raising the status

¹ Q. 54.

² Qq. 32, 33.

³ *Hansard*, lxvi. 395, February 13, 1843.

of the Newspaper Press by enabling well-intentioned journals to utter the truth with impunity, while lessening the opportunities for unscrupulous journalists to extort money by blackmail.¹ The Campbell Committee therefore passed lightly over the contentious question of public libel; it did not invite evidence on this subject, and it reported that "the limits of authorized discussion on political subjects are at present very undefined, and decisions and dicta are to be found in law-books which, if acted upon, would seriously fetter the wholesome Liberty of the Press." Yet, it continued, "from the mildness with which this branch of the Criminal Law has been administered by successive Administrations, and from the liberality of Judges and the discrimination of juries in modern times, little practical inconvenience has been experienced from the arbitrary doctrines of past ages, though they have never been formally superseded."²

But in respect of defamatory libels an improvement in the law was recommended, with the result that at last the Common Law of Criminal Libel was for the first time amended by Parliament and brought more into accord with the complex needs of modern life by the passing of "Lord Campbell's Libel Act" almost without opposition.³

Henceforward anyone prosecuted for a criminal libel that defamed some definite individual or group of individuals would be entitled to plead and prove the truth of the matter charged, if it was for the public benefit that it should be published.⁴

Therefore, except in this one instance, the Freedom of the Press in Great Britain is not the product of any law. It is based, on the Government side, on the consciousness that no generally satis-

¹ *Life of John Campbell*, ii. 178.

² *Report, ubi supra*. The twenty-five witnesses included Campbell, Abinger (Scarlett), Brougham, and Denman; Starkie and Borthwick; Black of the *Morning Chronicle*, Fonblanque of the *Examiner*, Rintoul of the *Spectator*. The seventeen members included Campbell, Abinger, Brougham, Denman, Lyndhurst, and Shaftesbury.—*Lords Journals*, lxxv. 27.

³ One teller for the Noes was appointed, but, there being no other Member to be a second teller for the Noes, Mr. Speaker declared the Yeas had it.—*Commons Journals*, xcvi. 605.

⁴ 6 and 7 Vict., c. 96, drawn by Thomas Starkie (1779-1849), author of a *Treatise on the Law of Slander and Libel*, and modelled on the Benthamite code of Louisiana. Bentham, however, regarded truth as always justified, and falsehood as sometimes excusable (*Works*, ii. 279); and Edward Livingston's *Project of a new Penal Code for Louisiana* established complete legal Freedom of the Press, and prescribed penalties for executing any law that restricted that freedom (ed. Southwood Smith, 1824, p. 30 sq.).

factory alternative to freedom has been discovered, and, on the side of enthusiasts like Richard Carlile, on the conviction that civil and religious liberty in general, and Freedom of Discussion in particular, is so precious to some men and women, and so necessary for the happiness and welfare of all, that it has to be practised, in almost total disregard of any laws to the contrary.

Subsequent developments have forced to the forefront various economic aspects of the Press which were not, and could not be, foreseen a hundred years ago. But, in respect of what they could see, time has confirmed the insight of the Radicals of those days. Public Opinion—the varied opinions that spread among an ever-widening public—has become more and more a force with which Governments have to reckon: a complex of forces, of which they are themselves but the partial representatives. And institutions have been continually, though sometimes very slowly and almost imperceptibly, changed, in accordance with the changing demands of the developing Public Opinion of mankind. To this extent the men and women of the early nineteenth century were right in looking upon a free printing-press in all its aspects as the symbol of human progress and emancipation.

APPENDIX A

PRINCIPAL SOURCES OF INFORMATION

AT the very forefront of the Struggle for the Freedom of the Press stood Richard Carlile, the Fleet-street bookseller, and it has been to the many volumes of his *Republican* that I have referred for first-hand information concerning the men and women who helped him bear the brunt of the battle. Another man indefatigable in this Struggle was Francis Place, the Charing Cross tailor: the Place Collection of Newspaper Cuttings, which belongs to the British Museum, testifies to his great activity, and as a guide to the political writings of the time this collection has proved invaluable; it contains, moreover, some interesting pamphlets and bills which are nowhere else to be seen, and some occasional notes by Place himself. Newspapers and other contemporary periodicals have been a source of much information. Biographies have been of little value except for the correspondence contained in them, and the amount of relevant unpublished material in the British Museum collections of manuscripts has also been found to be relatively small.

The Home Office correspondence at the Public Record Office has not proved quite so useful as one might have expected it to be. The entry-books, containing copies of letters sent out from Whitehall, are too important to be neglected; but the correspondence with the Law-officers of the Crown is strangely scattered through them on no apparent plan, and without approaching to anything like completeness. Again, the bundles of original in-letters are of very unequal value: official reports from the Law-officers and private letters to Ministers of State are frequently to be found along with letters of varying importance from county magistrates, and stories, as numerous as they are unreliable, of blasphemy and sedition; enclosed within these letters are also many Radical pamphlets and prints, some of which would not have survived if they had not thus found their way into the official archives,

APPENDIX B

PARLIAMENTARY PAPERS AND PRESS- PROSECUTIONS

THE following six Parliamentary Papers, most of them inaccurate, deal with Press-prosecutions during the period, 1819-32:

- (i.) Return of names of individuals sentenced for political libel (King's Bench and Scotland), 1808-21.—*Commons Journals* (1821), LXXVI. 1208.
- (ii.) Return of number of ex-officio informations for political libel, 1808-21.—*Ibid.*, 1209.
- (iii.) Return of details concerning nearly all prosecutions for libel (Great Britain without Ireland), 1813-22.—*Commons Journals* (1823), LXXVIII. 1082 sqq.
- (iv.) Return of prosecutions, under the direction of the Law-officers of the Crown, for libels defaming members of H.M. Government or other persons acting in an official capacity, conducted by the Treasury Solicitor, 1760-1830.—*Accounts and Papers*, 1830 (608), XXX. 211, and *Annual Register* (1830), p. 93 sq.
- (v.) Return of names and procedure in all prosecutions for libel conducted by the Treasury Solicitor, 1830-34.—*Accounts and Papers*, 1834 (202), XLVIII. 267.
- (vi.) Return of names of individuals sentenced for political libel, and of ex-officio informations filed, 1821-34.—*Accounts and Papers*, 1834 (410), XLVIII. 269 sqq.

PRESS-PROSECUTIONS

The following table, the figures in which are mainly derived from the above and are only roughly correct, will help to show the great decline in the frequency of Press-prosecutions after 1824, although mere figures are deceptive as to the real psychological significance of the prosecutions:

				Ex-officio Informations for Libel, filed by the Crown Law-officers.	Prosecutions for Seditious and Blasphemous Libels, and Libels defaming the King, his Ministers, and other officials.
1816	..	..	..	—	—
1817	..	..	..	16	26
1818	..	..	..	—	1
1819	..	..	..	33	63
1820	..	..	..	8	28
1821	..	..	..	3	24
1822	..	..	..	2	10
1823	..	..	..	2	3
1824	..	..	..	—	12
1825	..	..	..	—	—
1826	..	..	..	—	—
1827	..	..	..	—	1
1828	..	..	..	—	—
1829	..	..	..	6	6
1830	..	..	..	—	—
1831	..	..	..	—	3
1832	..	..	..	—	—
1833	..	..	..	3	6
1834	..	..	..	—	—

APPENDIX C

LIST OF AUTHORITIES

1. LEGISLATIVE AND ADMINISTRATIVE RECORDS AND DOCUMENTS.
2. LAW-BOOKS AND REPORTS OF TRIALS.
3. NEWSPAPERS.
4. PERIODICALS.
5. MISCELLANEOUS PUBLICATIONS.
6. CORRESPONDENCE, DIARIES, BIOGRAPHIES, AUTOBIOGRAPHIES.
7. HISTORIES.

MOST publications mentioned below were published at London; if they were first published elsewhere the place of origin is indicated.

Works not catalogued in the British Museum are marked with an asterisk (*).

Publications made the subject of criminal prosecution, and publications some parts of which were declared in a Court of Law to be criminal libels, are marked with a dagger (†).

Fuller details are usually to be found in the text or footnotes of this work.

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